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AND

**Quarterly Digest of Reported Cases.**

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# Law Magazine and Review.



## INDEX TO VOL. XXIII., FIFTH SERIES, 1897-98.

	<i>Page</i>
ACT, LAND TRANSFER... ..	179
ADMIRALTY, SILVER OAR OF ... ..	5
ADMIRALTY, CHARGE GIVEN BY SIR L. JENKINS AT SESSIONS OF ... ..	23
AMERICAN BAR ASSOCIATION ... ..	42
AMERICAN LAW, A POINT IN ... ..	59
ATTORNEY IN THE POETS ... ..	173, 350
BARONETS, ORDER OF ... ..	109
BAR ASSOCIATION, AMERICAN... ..	42
BOOKS RECEIVED:—	
ABRAHAM, <i>Law Relating to Factories</i> ... ..	63
ANSON, <i>Principles of the Law of Contract</i> ..	282
ASHBURNER, <i>Treatise on Mortgages</i> ... ..	61
ATLAY, <i>Lord Cochrane's Trial</i> ... ..	410
BAKER, <i>Archbold's Practice</i> ... ..	280
BEVEN, <i>Employers' Liability</i> ... ..	407
BIGELOW, <i>Law of Wills for Students</i> ... ..	407
BLACKWELL, <i>Law of Meetings</i> ... ..	268
BOWSTEAD, <i>Digest of Law of Agency</i> ... ..	276
BRODHURST, <i>Law of the Stock Exchange</i> ... ..	63
BROWN, <i>Snell's Principles of Equity</i> ..	413
CAMPBELL, <i>Ruling Cases</i> ....	270
<i>Canadian Annual Digest, 1896-7</i> ... ..	156
<i>Canadian Criminal Cases Annotated</i> ... ..	410
CASSELL'S <i>Family Lawyer</i> ... ..	270
CHILCOTT, <i>Law of Administration of Charities</i> ... ..	405
CLARKE, <i>Science of Law and Law Making</i> ... ..	402

	<i>Page</i>
COTTON, <i>Practical Statutes of the Session 1897</i> ... ..	146
CREWE, <i>Law of Arbitration</i> ... ..	276
CUNNINGHAM, <i>Indian Contract Act</i> ... ..	412
CUTLER AND CAGNEY, <i>Principles of the Law of Evidence</i> ... ..	282
<i>Digest of Cases in Supreme Courts of Scotland</i> ... ..	156
DODD, <i>Private Bill Procedure</i> ... ..	266
EMERY, <i>Smith's Law of Master and Servant</i> ... ..	413
EMMET, <i>Notes on Perusing Titles</i> ... ..	158
FONT, <i>Cuestiones de Derecho, &amp;c.</i> ... ..	414
FRASER, <i>Principles of the Law of Libel</i> ... ..	64
GACHES, <i>Rates and Assessments</i> ... ..	269
GACHES, <i>Law of Markets and Fairs</i> ... ..	268
GOMME, <i>Local Government</i> ... ..	147
GREIG, <i>Law of Trusts</i> ... ..	411
GRIFFITH, <i>Treatise on Joint Rights, &amp;c.</i> ... ..	150
HOCHHEIMER, <i>Law Crimes and Criminal Procedure</i> ... ..	409
ILBERT, <i>Statute Law relating to India</i> ... ..	399
INDERMAUR, <i>Students' Guides to Common Law and Equity</i> ... ..	160
INDERMAUR AND THWAITES, <i>Students' Guide to Real and Personal Property, &amp;c.</i> ... ..	160
INDERMAUR AND THWAITES, <i>Students' Guides to Procedure, &amp;c.</i> ... ..	275
JENKS, <i>Law and Politics in Middle Ages</i> ... ..	155
JONES ROBERTS, <i>Handbook to Workmen's Compensation Act, 1897</i> ... ..	154
JOYCE, <i>Marine, &amp;c., Insurance</i> ... ..	408
<i>Judicial Trustees Act, 1896</i> ... ..	269
KENNETT, <i>Stone's Justices Manual</i> ... ..	277
LAWRENCE, <i>Handbook of Public International Law</i> ... ..	279
LELY, <i>Woodfall's Landlord and Tenant</i> ... ..	413
LEWIS, PITT-, <i>History of the Temple</i> ... ..	410
LEWIS, PITT-, <i>Yearly County Court Practice</i> ... ..	271
MAITLAND, <i>Township and Borough</i> ... ..	274
MARSDEN, <i>Law of Collisions at Sea</i> ... ..	279
MARTIN, <i>Hudson Bay Company's Land Tenures</i> ... ..	406
MILLER, <i>Guide to Ecclesiastical Law</i> ... ..	412

	Page
MURRAY, <i>Yearly Abridgment of Reports</i> ... ..	410
NEWBOLT, <i>Sale of Goods Act</i> ... ..	62
ODGERS, BLAKE-, <i>Principles of Pleading</i> ... ..	159
PARKYN, <i>Law of Master and Servant</i> ... ..	153
PHIPSON, <i>Law of Evidence</i> ... ..	276
PORTER, <i>Law of Insurance</i> ... ..	278
PULLING, <i>Order of the Coif</i> ... ..	62
RATTIGAN, <i>Law of Divorce in India</i> ... ..	151
REDMAN, <i>Law of Arbitrations</i> ... ..	160
RENTON, <i>Encyclopædia of the Laws of England</i> 65, 148,	269
RINGWOOD, <i>Law of Torts</i> ... ..	277
ROBINSON, <i>Employers' Liability</i> ... ..	155
RUDALL AND GREIG, <i>Law of Trusts</i> ... ..	411
RUEGG, <i>Employers' Liability</i> ... ..	411
SEWELL, <i>French Law affecting British Subjects</i> ... ..	145
SIMONSON, <i>Debentures</i> ... ..	152
SPURLING, <i>Smith's Common Law</i> ... ..	282
STEVENS, <i>Mercantile Law</i> ... ..	156
STRAHAN, <i>Law of Property</i> ... ..	157
TADDEI, <i>Istituzioni di Diritto civile Italiano</i> ... ..	414
THWAITES AND INDERMAUR, <i>Students' Guides</i> ... ..	275
TYSEN, <i>Real Representative Law</i> ... ..	271
UNDERHILL, <i>Fisher's Law of Mortgage</i> ... ..	66
WALKER, <i>Executors and Administrators</i> ... ..	159
WARBURTON, <i>Leading Cases in Criminal Law</i> ... ..	157
WHEELER, <i>Letters Patent</i> ... ..	275
WHEELER, <i>Judicial Trustees Act</i> ... ..	267
WHITE, <i>Yearly County Court Practice</i> ... ..	271
WILBERFORCE, <i>Private Bill Procedure</i> ... ..	266
WILL, <i>Electric Lighting</i> ... ..	270
WILLIAMSON, <i>Law of Licensing</i> ... ..	408
WILLIS, <i>Workmen's Compensation</i> ... ..	65, 277
WITT, <i>Then and Now</i> ... ..	151
CAVE, MR. JUSTICE ... ..	39
CIVIL BUSINESS ON CIRCUIT ... ..	323
COMPARATIVE JURISPRUDENCE... ..	317

	Page
CONTEMPORARY FOREIGN LITERATURE ... ..	283, 414
CONTRIBUTORS:—	
ATKINSON, CHARLES M., <i>Punishment of Juvenile Offenders</i>	289
BAKER, SIR SHERSTON, <i>Admiralty</i> , 5, 23 ; <i>Notes on Recent Cases (English)</i> ... ..	260, 394
BARNES, T. J., <i>Quarterly Digest</i> ... ..	1, 29, 61, 95
BATY, TH., <i>Facilis Descensus Averni</i> ... ..	106
BENTWICH, HERBERT, <i>Comparative Jurisprudence</i> ...	317
BRODHURST, SPENCER, <i>Stockbrokers' Right to Indemnity</i>	355
CHRISTIAN, E. B. V., <i>Attorney in the Poets</i> ... ..	350
CRACKANTHORPE, MONTAGUE, <i>Legal Education</i> ...	67
GOVER, J. M., <i>International Law</i> ... ..	48, 127, 253, 384
HART, WALTER G., <i>Legal Education</i> ... ..	380
HOLLAND, SPENCER L., <i>Civil Business on Circuit</i> ...	323
JELF, ERNEST, <i>Piracy in Trade Names</i> ... ..	299
KENRICK, G. H. B., <i>Legal Disqualification of Women</i> ...	99
LAKE, BENJ. G., <i>Land Transfer Act</i> , 1897 ... ..	179
LORD CHIEF JUSTICE, <i>Legal Education</i> ... ..	163
MARSHALL, T. W., <i>Crime under the Roman Empire</i> ..	12
MONKSWELL, LORD, <i>Copyright Reform</i> ... ..	195
MONTMORENCY, DE, J. E/G., <i>Municipal London</i> ...	210
NORTON, LORD, <i>Prisons Bill</i> ... ..	309
PAIN, W. P., <i>Estates pur autre vie</i> ... ..	7
PICKERSGILL, E. H., <i>Prison Reform</i> ... ..	234
RUSSELL OF KILLOWEN, LORD, <i>Legal Education</i> ...	163
STRAHAN, J. ANDREW, <i>Is the Press Free?</i> ... ..	83
TALBOT, HON. REGINALD, <i>Judge Jeffreys</i> ... ..	336
UTTLEY, T. F., <i>Notes on Recent Cases (English)</i> ...	52, 138
VINDEX, <i>Order of Baronets</i> ... ..	109
WILLIAMS, JAMES, <i>Foreign Literature</i> ... ..	283, 414
WILME, R. FLETCHER, <i>Legal Reform in Egypt</i> ...	224
WOODCOCK, DRYSDALE, <i>Legal Education</i> ... ..	373
WRIGHT, SIDNEY, <i>Quarterly Digest</i> , Vol XXIII. ..	29
COPYRIGHT REFORM ... ..	195
CRIME UNDER ROMAN EMPIRE, PUNISHMENT OF ...	12
CURRENT NOTES ON INTERNATIONAL LAW ... ..	48, 127, 253, 384

	<i>Page</i>
DIGEST, QUARTERLY (Vol. XXIII., November, 1897, to July, 1898) ... ..	1, 29, 61, 95
DISQUALIFICATION LEGAL, OF WOMEN ... ..	99
DIVORCE AND JEWISH LAW ... ..	317
EDUCATION, LEGAL ... ..	67, 163
EGYPT, LEGAL REFORM IN ... ..	224
ESTATES <i>PUR AUTRE VIE</i> ... ..	7
FACULTY OF LAW IN TEACHING UNIVERSITY ... ..	67
<i>FACILIS DESCENSUS AVERNI</i> ... ..	106
FOREIGN LITERATURE, CONTEMPORARY ... ..	283, 414
INTERNATIONAL LAW, INSTITUTE OF, AT COPENHAGEN ... ..	47
INTERNATIONAL LAW, CURRENT NOTES ON 48, 127, 253, ... ..	384
INTERNATIONAL LAW ... ..	106
INDEMNITY, STOCKBROKERS' RIGHT TO ... ..	355
INDEX OF CASES ( <i>Quarterly Digest</i> , Vol. XXIII.) 24, 56, 89, ... ..	122
IS THE PRESS FREE? ... ..	83
JEWISH LAW AND DIVORCE ... ..	317
JUDGE JEFFREYS ... ..	336
JUVENILE OFFENDERS, PUNISHMENT OF ... ..	289
LAND TRANSFER ACT, 1897 ... ..	179
LEGAL EDUCATION ... ..	67, 163, 373
LEGAL DISQUALIFICATION OF WOMEN ... ..	99
LEGAL REFORM IN EGYPT ... ..	224
LITERATURE, FOREIGN... ..	283, 414
LOCKWOOD, SIR FRANK... ..	92
LONDON, MUNICIPAL ... ..	210
MUNICIPAL LONDON ... ..	210
NOTES ON RECENT CASES (ENGLISH) ... 52, 138, 260, ... ..	394
OBITER DICTA ... ..	1
ORDER OF BARONETS ... ..	109
OBITUARY:—	
MR. JUSTICE CAVE ... ..	39
SIR FRANK LOCKWOOD, Q.C. ... ..	92
RIGHT HON. SPENCER H. WALPOLE, Q.C. ... ..	369



	<i>Page</i>
PIRACY IN TRADE NAMES ... ..	299
PORTS, ATTORNEY IN THE ... ..	173, 350
PRESS FREE? IS THE ... ..	83
PRISONS BILL ... ..	309
PRISON REFORM ... ..	234
PUNISHMENT OF CRIME UNDER ROMAN EMPIRE ... ..	12
PUNISHMENT OF JUVENILE OFFENDERS ... ..	289
QUARTERLY DIGEST (Vol. XXIII.) ... ..	1, 29, 61, 95
RECENT CASES (ENGLISH), NOTES ON ... ..	52, 138, 260, 394
REFORM, COPYRIGHT ... ..	195
REFORM, LEGAL IN EGYPT ... ..	224
REVIEWS... ..	61, 144, 266, 399
SILVER OAR OF ADMIRALTY ... ..	5
STOCKBROKERS' RIGHT TO INDEMNITY ... ..	355
WALPOLE, RIGHT HON. SPENCER H. ... ..	369



## EDITORIAL.

SHORTLY after the issue of the November number a change took place in the proprietorship and editorship of the *Law Magazine and Review*, and under new management and new editorship it is hoped that this old-established English Quarterly Review of Jurisprudence (now in the seventieth year of its existence) will maintain its position as the leading Journal of the Legal Profession.

It is the intention of the new management to develop and maintain in every respect the original conception of the *Magazine*, which, since its establishment in 1828 by Abraham Hayward, of the Western Circuit, Q.C., has been followed with success by the late Professor Taswell Langmead, the late Mr. C. H. E. Carmichael, M.A., and Sir Sherston Baker, Bart., and to keep its pages open for the free but temperate discussion of all questions relating to the Theory and Practice of the Law.

Special attention will also be directed by competent writers to the question of Legal Education, which is daily becoming of increasing importance, and demands the serious attention of those who are interested in the welfare of the Legal Profession.

The Editor will be grateful for the kind co-operation of everyone concerned in the teaching, study, practice, or administration of the law, in promoting the usefulness of this *Magazine*.

It is much regretted that owing to unavoidable circumstances this issue of the *Magazine* is several days late.

*February, 1898.*

## NOTICE TO PUBLISHERS.

The *Law Magazine and Review* receives or exchanges with the following amongst other publications:—*Review of Reviews*; *Juridical Review*; *Public Opinion*; *Law Times*; *Law Journal*; *Justice of the Peace*; *Law Quarterly Review*; *Case and Comment*; *Canada Law Journal*; *Harvard Law Review*; *American Law Register and Review*; *University Law Review*; *American Law Review*; *Chicago Legal News*; *Madras Law Journal*; *La Revue Général*, Brussels; *Journal Du Droit International Privé*, Paris; *La Justizia Penale*, Rome; *Revue Bibliographique Belge*, Brussels.

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N.B.—Arrangements are being made for the efficient reviewing of all contemporary American, Colonial and Foreign literature, commencing in our next issue.

# THE LAW MAGAZINE AND REVIEW.

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No. CCCVII.—FEBRUARY, 1898.

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## I.—THE FACULTY OF LAW IN A TEACHING UNIVERSITY.

**T**HE London University Commission Bill to be re-introduced in the coming session, will, there is good ground for believing, successfully run the gauntlet of both Houses. The irreconcilables are beginning to be reconciled, the long-standing controversy over internal and external students is fast drawing to a close. Opposition, although not quite silenced, has almost dwindled to a point. The Statutory Commissioners have been already nominated, and the choice of Lord Davey as their Chairman has given entire satisfaction. It only remains for Parliament to start the Commissioners on their delicate task of so reconstructing the present University of London as to make it worthy of the vast intellectual resources with which the Metropolis abounds.

The interest of the legal profession in this transformed institution will naturally be centred in its Faculty of Law. Hence it is of that Faculty only that I propose to treat.

Twelve years ago a Committee of eminent London Professors, with Mr. T. H. Huxley at their head, forwarded to the Council of Legal Education, as representing the Inns of Court, the following diplomatic despatch:—

“The Committee ventures to think that the work hitherto done for legal education by the Inns of Court, useful and fruitful as it has already been, is capable of an extension, leading to still more important results. The lectures established by the Inns of Court for the benefit of their students, have done much in

the way of direct instruction, and as much, perhaps, indirectly in the way of raising the general standard of legal study and teaching. Brought into connection with a more comprehensive system, the instruction carried on under your direction would command a wider range of hearers, it would assist in removing the ignorance that prevails among the lay public as to the nature and functions of the Inns of Court, and it would tend to maintain the just weight and reputation in the country of those ancient and honourable Societies. To the proposed University it would be of inestimable value that those Societies, already shewing a long and illustrious collegiate history, should be intimately associated with its faculty of law and bear therein the prevailing authority which would be their due.

"It is hardly necessary to say that no suggestion is made or would be entertained by the Committee to the effect of interfering in any manner whatever with the existing power and function of the Inns of Court as regards the right of Call to the Bar, or any other matter appertaining to the professional character of those honourable Societies, or the authority which they exercise over their members and the profession generally. By taking through the Council of Legal Education a leading part in constituting the Faculty of Law in the proposed University, the Inns of Court would in no way prejudice their perfect independence and ancient rights in all things affecting the Bar as a profession."

When the University of London is re-constituted, a like appeal from that quarter will be made to the Inns, and the question raised in 1886 will then recur, What attitude should the Inns assume? The rest of this paper is designed to furnish materials for the answer.

The question of the sufficiency of a system of legal teaching—be it general or special—is obviously a relative one. Before we can answer it we must know what is the standard adopted by other countries. Now it so happens that this standard as it exists to-day in parts of Europe and America has come under my personal observation, and in circumstances which have afforded me exceptional opportunities for observing it. In 1896, I attended the meeting of the American Bar Association at Saratoga, in company with

the Lord Chief Justice and the late Sir Frank Lockwood, and in 1897 I attended the International Congress of Advocates at Brussels as the representative of the Bar Council. Now, both at Saratoga and at Brussels, legal education formed a prominent topic of debate from an international standpoint. I shall, therefore, take leave to approach the subject from the same point of view on the present occasion.

I begin with Germany, because in that country education is more completely organised than in any other part of the globe. In the German empire there are twenty Universities, all supported by the State, yet all to a great extent self-governing. Each comprises four Faculties—Philosophy, Theology, Medicine, and Law. These Faculties are the avenues to the various learned professions, as well as to all the State offices. No one can matriculate at a German University who has not gone through a course of secondary education either at a classical *gymnasium*, or at a *real gymnasium* or *real schule* (these two last corresponding to the “modern side” of our English public schools). Now in a German University—I take Prussia as typical of the rest—the law student attends lectures on the philosophy of law, on the foundation of legal principles, on the history and theory of legal conceptions, such as the family, contract, succession at death, and so forth. This is termed the “philosophical course,” and is gone through by way of introduction to the courses in professional law of which there are quite as many as with us. The subjects of the first set of lectures I shall hereafter indicate by the general phrase “theoretical law,” to distinguish them from the subjects of the second. Roughly speaking, by “theoretical law” I mean that which forms a necessary part of a wide, liberal education, and without some knowledge of which a man does not feel perfectly at home in the society of well-educated people. By “professional law” I mean such

technical knowledge as no layman need blush for being without. Obviously the two run into each other. But the broad distinction between them is clear enough.

German law teaching has one special feature which is worth while recording here, since it has been found peculiarly efficacious for furthering habits of reflection and stimulating original thought. I allude to the *Seminar*, of which the following description is taken from an eye-witness:—The *Seminar* meets every week in a special chamber more convenient and more elegant than the ordinary lecture-room. There are two long tables and one short cross table, in the centre of which is the Professor's seat. The students come in one by one, salute each other ceremoniously, according to German fashion, and take their customary seats, each having behind him a drawer or cupboard where he can place his books and manuscripts. The Professor enters, having in his hand a treatise composed by one of the pupils on some subject which the Professor has given out. This he has already carefully read and annotated, in order that he may discuss it with the class. He begins by pointing out its literary merits and defects. He then indicates the sequence of ideas and provokes a debate on moot points. There is no desultory talk, no unnecessary interruption. What is new in the law is illustrated by what is old, both historically and philologically. So completely arrested is the attention of the pupils, that, although the *Seminar* lasts two hours, there is no sign of fatigue or impatience on their part.

In Prussia, the legal *Seminar* comprises three sections, viz., Roman, German and Canon Law. A student wishing to become a member presents himself beforehand to the Professor, who ascertains by personal inquiry whether he is sufficiently equipped to benefit by it. Once admitted, a new relation of an intimate kind is established between the master and the pupil, reminding one of that which subsisted

in ancient Rome between the patron and the client. The pupil has the privilege of seeking the master's advice, in and out of University hours, as often as he reasonably requires it.

A word or two as to University examinations in Germany. Of these there are two kinds—academic and State. The former qualify for the doctor's degree, which is the only passport to professorial rank; the latter qualify for the learned professions. The academic examination in law is conducted by two legal practitioners, in conjunction with two members of the University teaching staff. To them is added a Magistrate or Judge, whose office is mainly nominal, but who has a casting vote in the event of an equal division of opinion as to the merits or demerits of a candidate. The form of this examination resembles that for the doctor's degree in our own ancient Universities. It consists of two parts, the first being the composition of a treatise on some branch of law chosen by the candidate himself, the second being an oral examination in all branches of the law and also in political economy. The oral examination often lasts four or five hours, and is a most effective engine for detecting and checkmating *cram*.

France, like Germany, only opens the door to the higher education through its secondary schools (*lycées, collèges communaux*). But there the parallel ends. Whereas in Germany the *gymnasium* is only a preparation for the University, which alone confers a diploma or degree (usually at the age of 25), a diploma of the nature of a degree may be obtained in France at a *lycée* or a *collège* by a lad of 18. Again, in France, until very recently, there were no Universities at all. There were only Faculties, consisting of Professors appointed by the State with a titular dean (*doyen*) at their head. Moreover, these Faculties were not self-governing like the German Universities. They were merely subordinate parts of an elaborate machinery



(*L'Université de France*) designed by the First Napoleon as a means of centralising State control.

The French Faculties of Law concerned themselves exclusively with the professional training of *avocats* and *avoués*, these being, as with us, separate limbs of the same body. Of theoretical law, as I have defined the term, there was next to none. Everything was sacrificed to practice.

So matters stood down to the Franco-German War. But *fas est et ab hoste doceri*. Since then a great change has taken place. Chairs of public law (national and international) have been founded. The philosophy and history of law, comparative law, and the theory of legislation, have been made separate subjects of instruction. In short, the French have for the last quarter of a century been remodelling their educational system upon German lines. Finally, a decree of 1896 has put the coping stone on the educational edifice by incorporating each local group of Faculties into a distinct University. The ideal for which Guizot, Cousin, and Taine so long and so powerfully laboured has thus at last been realised.

In Belgium, the demand for legal educational reform has been of late years even brisker than in either of the countries just mentioned. It began in 1894 with a resolution passed by the Brussels Junior Bar (the *jeune barreau belge* is a wonderfully energetic body), demanding that legal teaching should be made more scientific, and that this should be accomplished by University teaching and University examinations. As a consequence of this resolution, a Special Commission was appointed in 1895. It recommended that, in addition to strictly professional subjects, the following should form part of the legal curriculum — psychology and moral philosophy, logic, philosophy of law, elements of the history of law, elements of the history of philosophy—these to be compulsory. It further recommended that there should be optional

examinations in literature, natural science, elements of political economy, history, modern languages (especially English and German), and Latin philology. Truly a formidable list! What will be said to it by the Inns of Court student whose tests in general culture are confined to a knowledge of his own tongue, of a little Latin prose, and a little English history?

To complete the general survey it remains to glance at the state of legal education on the other side of the Atlantic.

There are in America no less than 137 Universities and institutions (without reckoning the Law Schools, properly so-called, as to which a word presently) where theoretical law is taught. Early in the present century the Corporation of Yale College, Connecticut, voted the establishment of a Professorship of Law, the design of which was "to furnish lectures on the leading principles of the Law of Nature and Nations, on the general principles of Civil Government, particularly of Republican Representative Government, on the Constitution of the United States, on the various obligations and duties resulting from the social relations between National and State Governments." In 1826, the friends of Chancellor Kent established at Yale the Kent Professorship of Law which embraces National, International, Constitutional and Municipal Law, and such other subjects of jurisprudence as the Corporation of the College shall from time to time approve. This Professorship was at one time held by Mr. E. J. Phelps, whose recent official sojourn in London is associated with such pleasant memories for many of us.

As a practical illustration of the way in which historical jurisprudence is taught in an American University, it is worth while to quote from the evidence given by Mr. G. H. Emmott, Professor in that department at the Johns

Hopkins University, Baltimore, before the Gresham Commission :—

"It is usual for the men who work with me to make their main study in the field of history. They usually in that way select history as their principal subject; historical and comparative jurisprudence as their first subordinate subject; and very frequently political economy as their second subordinate subject. They then write a thesis on some special topic of history; for instance, a thesis that I have in mind at the moment relates to the early English manor. That is a thesis written by a man who took history as his principal subject and made a special study of the old English manor from such documents as he has access to on our side of the Atlantic. When he came to the end of his three years, he would be examined in the whole field of history, but naturally with special relation to such particular department as he had studied. He would be examined in the history of principles of Roman law, the general history of the English common law, and a knowledge of the leading statutes, and he would also be examined in the more general principles of political economy."

Here again, as in the German *Seminar*, is scope for original work. What, I repeat, does the Inns of Court student say to it?

Of American Law Schools, properly so-called, there are now 81, numbering upwards of 10,000 students. Of these schools, some 68 are connected with Universities. The earliest American Law School was established in Litchfield, Connecticut, in 1784. The next in point of date was the Harvard Law School at Cambridge, Massachusetts, which was opened in 1817. Here it was that Mr. Justice Story began to lecture in 1829, and to him and to his successors in the same chair we are indebted for many valuable contributions to our legal literature.

The American Law Schools did not for some time attempt to teach theoretical law, but quite recently a movement has displayed itself in favour of their doing so. This is due to the efforts of a Committee of the American Bar Association which, in 1891, recommended that wherever

a longer course of study was possible, provision should be made there for courses in general jurisprudence and public law, and that students should be required, in addition to the usual course in private law, to pursue at least a certain number of subjects in public law, international law, the history and theory of law, comparative jurisprudence, and the science of government.

When a geologist discovers cropping up in one hemisphere a stratum of rock of the same character, and following the same direction, as that which he has already noted in another hemisphere, he is justified in inferring that there is a physical connection between the two, which, but for the intervening ocean, would be patent to the eye. So when, in different parts of the world, we find the same train of thought in progress, the same intellectual needs craving to be satisfied, we may properly infer that they rest on a common basis. And the common basis is the recognition of the fact that professional work is only kept up to a high standard by encouraging and instilling scientific knowledge.

Let us now revert to the current programme of study issued by the Inns of Court in order to see how far this principle is kept in view. We shall find that little scope is given to Constitutional Law or legal history, not from any default on the part of the Council of Legal Education, but because the Consolidated Regulations of the Inns of Court have grouped them together as a single subject, and committed them to a single Reader, without any Assistant Reader. Again, we shall find—a still greater marvel—that Roman Law, Jurisprudence, and International Law (public and private) are also all grouped as a single subject and committed to one Reader and one Assistant Reader. Administrative Law, Colonial Law, Comparative Jurisprudence, theory of law and legislation, are all conspicuous by their absence. And this, notwithstanding that the Inns

number amongst their members many Colonial and Indian students.\*

Not the least strange part of the matter is that whilst the Inns thus abstain from adequately teaching theoretical law themselves, they refuse to recognise officially that any such law is taught elsewhere. With the one exception of Roman Law the whole of the legal teaching of the Universities of Oxford and Cambridge counts with them for nothing at all. It is not surprising that remonstrances should have been made, but they have been made in vain. It seems to be supposed that because the ancient Universities are the homes of classical and mathematical learning, they can only teach law "in the air." This is however quite a mistake. In the Law School at Oxford the student is taught a great deal of professional law, he is encouraged to study the cases that are reported every month, and is posted up in the latest decisions of the Courts. Professor T. E. Holland, who is both an examiner at Oxford and at the Inns of Court, assures me that the Oxford B.C.L. degree implies now a higher standard than does the call to the Bar.

At Oxford there are four University Professors in the Faculty of Law, viz.: the Regius Professor of Civil Law, the Vinerian Professor of English Law, the Chichele Professor of International Law and Diplomacy,

\* I have endeavoured to trace the rise and progress of the Inns of Court as Schools of Law in the *Nineteenth Century*, November, 1892. The history there given will be brought down to date if I mention two facts. Very recently the Inns have opened their lectures and classes to articulated clerks (of whom about seven attend) and to the general public. They have also started special evening lectures with a view of attracting students who are engaged during the day. The subjects of these lectures down to the end of last year have been: (1) "Negotiable Securities"; (2) "The Duties and Liabilities of Trustees"; (3) "The Law of Libel"; (4) "Company Law"; (5) "Patent Law." This experiment, owing to the eminence of the lecturers, has proved an unqualified success.

and the Corpus Professor of Jurisprudence. In addition to the courses of lectures given by the University Professors and by the University Readers in English and Indian Law, there are many law lectures given by men who are attached to the various collèges. These are practically open to every member of the University on payment of a small fee. In Michaelmas term last there were delivered at Oxford three courses of lectures on topics falling within the field of Roman Law, five courses in different topics in English Law, one course in International Law, three courses in Jurisprudence (historical and analytical), two in Indian Law, and one in Constitutional Law.

At Cambridge there are five University Teachers of Law, the various Colleges providing some six or seven more. The Law Tripos consists of two parts, and the LL.B. degree is only conferred on a student who has obtained honours in both parts or (alternatively) has attained honours in one part and also other honours in the same or some previous examination of the University. The examination for the first part of the Law Tripos consists of papers on the following subjects:—(1) General Jurisprudence; (2) History and General Principles of Roman Law; (3) the Institutes of Gaius and Justinian with a selected portion of the Digest; (4) English Constitutional Law and History, including a general view of existing English Legal Institutions; (5) Public International Law; (6) Essays and Problems having reference to the subjects set for this part of the examination.

The second part of the Law Tripos consists of papers on the following subjects:—(1) The English Law of Real and Personal Property; (2) the English Law of Contract and Tort, with the equitable principles applicable to these subjects; (3) English Criminal Law and Procedure and Evidence; (4) Essays having reference partly to the subjects

of the first, partly to those of the second part. If these two lists of subjects are compared with the programme of the Inns of Court it will be seen that they cover the same ground, with this advantage to Cambridge that there the teaching of theoretical law is carried further than with us.

Before leaving the subject of teaching by lectures—of which in my time I have had some experience both as lecturer and lecturee—I should like to say a few words upon what appear to me to be their real value and what the secret of their success. The late Lord Coleridge (amongst others) was of opinion that to attend a lecture was no better than to read a text-book ; indeed, he thought it was not so good, because you could look back at a book and, if need be, make a mark in it, whereas he maintained that if you listened to a Professor and once began to think, you were in danger of missing the next point. The same thought is expressed in the epigram (I think of Schleiermacher), “that Professors are the only men who dare to ignore the invention of the art of printing.” For my part, I do not agree with these wholesale strictures. To any one who, for the first time, approaches so complex a subject as law, its field seems entirely beyond his grasp. The office of the lecturer is to take him by the hand and guide him across the undiscovered country. Text-books (and there are many excellent ones) no doubt do this in a measure, but a book is a dead abstract thing ; a lecture is, or should be, something living and growing. Of course, there are lectures and lectures. There are men with great learning who will always fail to hold an audience. There are men with not much learning, but with an attractive personality, who will always succeed in doing so.

A lecturer, whatever his subject, should not read from a manuscript. Although his discourse should never be impromptu, he should contrive to give it that air. A few notes, indeed, he should have before him, for they will

prevent him going astray. But, provided he is master of his subject, this is all the written aid he requires, and all of which he should avail himself. Again, a lecturer should be on his guard against a too rapid delivery. He should allow his audience time to think, bearing in mind that what is familiar to him is probably wholly new to them. The most effective oral lecture I ever attended, when I was an undergraduate at Oxford, was delivered on a branch of Moral Philosophy by a very original thinker, who hesitated and stumbled over his words in a most surprising way. I can even at this distance of time recall the vision of the Professor struggling to express the thoughts within him, and so magnetic was his power, that I felt myself struggling too. That lecture I never forgot, for when I left the classroom I felt as if I had given it myself.

Another point to be noticed about lectures is that the audience should be dissuaded from taking copious notes whilst the lecture is proceeding. At most they should jot down a few catchwords in order to aid the memory. Mr. W. Blake Odgers, in his evening lectures on libel, adverted to in a note on a previous page, improved on this idea. When he entered the class-room on his opening night he found there about a hundred students, armed with pens, ink and paper, ready to take down as much as possible of what he was about to say. His first sentence rather astonished them. He requested them to put all this apparatus on one side and to give him their undivided attention. They would find, he said, no note-making necessary, for at the close of the lecture he would hand to each of them a printed *résumé* prepared by himself which they would find much more accurate than any they could make on the spur of the moment.

As an alternative to a formal lecture, it will be found useful occasionally to expound cases decided by the Courts. The teacher selects from the Reports some well-known



authority illustrative of a legal principle, he examines the arguments *pro* and *con*, and occasionally appeals to the class to know how they would themselves decide it. Sometimes, to make the appeal more forcible, he asks for a show of hands in favour of the plaintiff and defendant respectively. The system of teaching by "Cases" is a favourite one in America, and Mr. Justice O. W. Holmes, who occasionally acts as Harvard Professor, is one of its warmest supporters.

By far the most important part of professional training, however, the *sine qua non* for those who wish to succeed in practice, is that which no University, no Faculty of Law, no Inn of Court can supply. All the lectures in the world will not make a man a business lawyer. Just as surgery, obstetrics, and medicine can only be learnt by "walking the hospitals," so business law can only be acquired by handling legal documents of all sorts in the Chambers of a practitioner, and by watching the turns and twists of actual litigation by attending Courts of Justice.

"To put the scientific lawyer, however learned he may be, to conduct a case in Court is," as Sir R. Webster truly said before the Gresham Commission, "very much the same thing as putting a philosopher who has studied navigation to navigate a ship, or a person extremely skilled in the theory of steam and the theory of fluids to drive an engine." The Inns of Court are quite alive to this fact, and yet they call a man to the Bar without taking any security that he is duly qualified to act as a barrister. All they do is to "recommend" to the student in their Consolidated Regulations—which not one in a hundred troubles himself to read—that he should attend "in the Chambers of a Barrister or Pleader for the purpose of studying the practice of the law." They expressly say that such attendance shall not be compulsory. No doubt they were influenced in framing this rule by the awkward circumstance that "reading in

Chambers" is a costly process, but it is not nearly so costly as being articulated to a solicitor, and if the Incorporated Law Society insist on the one, why should not the Inns of Court insist on the other ?

Here, again, I cannot help thinking we might learn a lesson from the Continent. Germany, which, as we have seen, is so careful in the matter of theoretical law, is no less so in the matter of practical law. A German student may have passed all his University examinations and have obtained his doctor's degree, but he cannot be inscribed in the "Order of Advocates," cannot have full liberty to practice, until he has gone through a further course of probation lasting no less than four years. During this period he learns all the "professional ropes," and is initiated into every "trick of the trade." Here is a list of his compulsory experiences :—Nine months' attendance at a departmental tribunal of the lower degree, a year at a tribunal of first instance, four months in a Magistrate's office, six with an advocate or notary, nine at a departmental tribunal of the higher degree, eight at a Court of Appeal. When these four years are over, he has still to undergo one more examination, partly written and partly oral, before he can earn the title of "Assessor" and rank as a full-fledged practitioner.

The obligations imposed in France and Belgium during the period of probation are not so stringent as in Germany, but they are pretty severe. Attendance at the Courts for stated times is required, and careful precautions are taken to ensure such attendance being given. Again, the probationer (*stagiaire*) must attend the meetings of the *bureau de consultation gratuite*, which meets once a week and undertakes all pauper, or *pro Deo*, cases, whether criminal or civil. Nowhere in Germany or France is witnessed the singular spectacle, so common at our own Assizes and Quarter Sessions, of a dozen or more prisoners being tried

for small offences with no one assigned to defend them when there are more than that number of bewigged young barristers in Court only too anxious to try their 'prentice hand at cross-examining a witness and addressing a jury. It may be that the organisation here of a *bureau de consultation gratuite* would not be within the province of the Inns of Court, but, if not, it might surely be set on foot by the General Council of the Bar and worked through local or circuit committees.

I have now completed my tour of inspection and must bring this paper to a close. As will have been seen, I have confined myself as much as possible to facts, and have left the argument to take care of itself—a form of advocacy not common in our Courts, but, when the facts are eloquent, more convincing than any other.

The conclusions to be drawn are, I venture to think, these :—

1. That theoretical or non-professional law should, in accordance with the practice of other nations, be taught in England both as part of a liberal education and as introductory to, and closely connected with, technical or professional law.

2. That theoretical law is not at present adequately taught by the Inns of Court, and by reason of the strictly professional character of those Inns, cannot be so taught.

3. That, to remedy this defect, it is expedient that a Faculty of Law should be established in London as part of a Teaching University, and that such Faculty should teach both non-professional and professional law so far as the latter is capable of being taught by lectures and classes.

4. That with regard to so much of professional law as can only be learnt by actual contact with business, a probationary system, modelled on the lines of the Continental *stage*, should be set on foot by the Inns of

Court or the General Council of the Bar, or by both conjointly.

5. That, to avoid the multiplication of tests, the Faculty of Law in the Teaching University should recognize and give full effect to examinations *in pari materia* held and passed in any other University within the British Dominions.

6. That the Inns of Court and the Incorporated Law Society should be properly and adequately represented on the proposed Faculty of Law and the other Councils of the University, and should, in return, contribute to the funds of the University, according to their means.

7. That the privileges and powers both of the Inns and of the Law Society, as licensing and disciplinary authorities, should remain unaffected by the proposed reform, the object being not to curtail, but to enlarge the dignity and usefulness of those important bodies.

MONTAGUE CRACKANTHORPE.

## II.—IS THE PRESS FREE?

A FEW weeks ago the Lord Chief Justice on one and the same day dismissed three actions for libel against newspapers. The ground of dismissal in all cases was that the action was frivolous. This fact naturally enough attracted considerable attention and led to many comments on the state of the law affecting newspapers, some of these going the length of alleging that the press of England was in no proper sense of the word free. Under these circumstances it may perhaps be interesting to review shortly the legal position of English newspapers.

Taking liberty of the press in the sense in which it was understood by Lord Hardwicke (10 Parl. Hist. 1330),

by Lord Mansfield (*Rex v. Dean of St. Asaph*, 3 T.R. 431 (note)), and by Blackstone (4 Bl. Com. 151), there can be no doubt but that the newspapers of England are, and have long been, completely free. "The liberty of the press," says Blackstone, "consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published." Since 1695, when the Licensing Act was allowed to lapse, there have been no previous restraints on the press as to what it shall publish. But it may reasonably be contended that Blackstone's definition describes theoretical rather than practical freedom of publication. Even though there be no censorship of the press the laws applicable to matter published may be so arbitrary and oppressive as to render the right to publish freely a right too dangerous to exercise. And in the view of those who say the press is not free this is precisely the case. Their position is that while the press is theoretically free yet the laws applicable to published matter make that freedom almost a fiction, or at any rate a privilege which can be exercised only very charily, and even then subject to ruinous risks.

That this may be the case history clearly shews. It may be doubted whether for some years after the Licensing Act lapsed, the press was practically much freer than it had been before. In 1680 Chief Justice Scroggs had laid down the law thus :—"If you write on the subject of government whether in terms of praise or censure, it is not material; for no man has a right to say anything of government" (*Carr's Case*, 7 State Trials 929). For the best of a century that dictum was unquestioned by the judges. It was not till 1765 that it was formally repudiated by Lord Camden (*Entick v. Carrington*, 19 State Trials 1030). But as Mr. Dicey in his luminous work on "The Law of the Constitution" has pointed out (p. 238), the great effect of the lapse of the censorship lay not in the alteration of the

law directly, but in the circumstance that after it a press offence became an offence against the ordinary law and was like any other offence, only punishable after conviction before a jury. Prerogative lawyers might lay down what rules they liked as to the sanctity of kings and governments; these could only be put in operation with the acquiescence of the public generally, in the form of jurymen. For some time the views of the public generally were much the same as the views of the lawyers. But as a desire to know how they were governed, and to share in their government, developed itself among the people, conflicts between judges and juries and between the privilege of Parliament and the common law of England, became frequent. The result of these was always the same: the victory always lay with the juries and the law. The doctrines of the lawyers were abolished by Act of Parliament where they conflicted with the views of the people (Fox's Act, 32 Geo. III., c. 60; Lord Campbell's Act, 6 & 7 Vict., c. 96), the privileges of Parliament were abandoned or became practically obsolete until the very practices condemned in unmeasured terms by former judges and ministers became at last specially privileged and protected by the Courts. The most striking instance of this is the reporting and commenting upon the proceedings of Parliament. Until near the end of the last century this was held to be a gross outrage on the liberties of the Legislature. In 1868 Lord Chief Justice Cockburn, in a historical direction to a jury, laid it down that such reports and comments, even though defamatory in the highest degree, were not actionable if they were fair and *bond fide* (*Wason v. Walter*, L.R. 4 Q.B. 73).

The influence of the jury did not stop there. In its desire to secure free discussion of not merely the proceedings of the government, but of the conduct in their office of all officials, it has practically rendered obsolete the whole law of libel in regard to certain classes. In every issue of some

newspapers strong reflections are thrown on the skill, capacity, or even honesty of some distinguished public servant—a prince, a minister, a general, or a judge. None of these persons, however, ever dreams of vindicating his reputation by an action for libel. This does not arise through any alteration in the law of libel. That is just the same on these points as it was when Leigh Hunt went to jail for describing the Prince Regent in the reverse of complimentary terms. It arises solely from the change in public sentiment. "Public men," said a great judge, "should not be too thin skinned." So thinks the public, and so think the juries who in our Courts represent the public. So a public man knows that if he seeks a remedy against a libel, whatever the law may be, this view will guide the jury's decision.

Freedom of discussion and comment then, as far as the government is concerned, and as far also as the representatives and officials of the government are concerned, is practically unrestricted. Any inequity which the law affecting newspapers displays must be between the press and private individuals.

On this view of the question the friends of the press make one serious point. They say that it is always pretended that there is no law specially applicable to the press in England, that defamation in it is precisely the same as defamation in a private letter, that in both cases the defamation is subject to the ordinary law of libel, and whatever advantage there is in that is on the side of the press. This is, they contend, only formally true, because the whole law of libel was created for the express purpose of restricting the liberty of the press. The common law knew no distinction between slander and libel. The distinction was first made by the Star Chamber in order to punish with greater severity than the common law allowed, defamation appearing in political pamphlets and afterwards

in newspapers. Later, when the Star Chamber was abolished, the common law Courts adopted the distinction, but affected that it was not a special law for controlling the press, but a general law applicable to all kinds of written defamation. ("The History of the Law of Libel," 10 *Law Quarterly*, p. 158.)

This contention seems to be supported by authority, but it can hardly be said to advance matters much. The real question is not how the distinction between libel and slander arose, but whether it is founded on reason and justice. It seems to me that if it arose through a desire on the part of the judges to strengthen the law of slander as against the press, other persons have more reason to complain than writers in the press. Surely it is more inequitable that malicious gossip written in a private letter from a friend to a friend should be treated as seriously as the same thing printed in a newspaper and sold by the thousand to friend and enemy alike, than that malicious gossip when printed in a newspaper should be regarded as more serious than when whispered in the corner of a club room? It has been said that no newspaper ever appeared which did not in every issue commit a breach of the law of libel. It is at least equally certain that this applies to every confidential letter, and but for the fact that law and decency alike prevent the publication of private letters, the application of the law of libel to these would long before this have been restricted.

It is said, however, that this distinction between libel and slander acts in two ways very unfairly as far as the newspaper press is concerned. In the first place it makes a newspaper, which merely reports what a speaker publicly says, liable in damages to the persons injured or supposed to be injured, while the speaker himself often escapes. Undoubtedly this has at first sight an air of unfairness, though in practice it seldom works unfairly. Usually the editor, who knows his



business, knows very well what speeches he may and what speeches he may not report. He knows that that depends less on the matter of the speech than on the character of the speaker. It is the rarest thing in the world to find a newspaper sued for publishing reports of the speeches of prominent public men however free such speeches may be in imputing motives to those from whom the speakers differ. Action is as a rule only taken against the newspaper when the speaker is a person put up at some hole and corner meeting for the known but unexpressed purpose of slandering opponents. The provision of Sect. 4 of the Law of Libel Amendment Act, 1888 (51 and 52 Vict., c. 64), which extends protection to the publication of speeches at public meetings provided the matter of them is of public concern, and the publication of it is for the public benefit, seems nearly sufficient to cover any possible injustice. Perhaps it might be suggested that the decision in *Pankhurst v. Sowler* (3 *Times* L.R. 193), that the question is not whether the speech as a whole deals with matter of public concern, and the publication of it is for the public benefit, but whether this is the case as regards the particular defamatory passage complained of in the action might be reconsidered. It seems unreasonable to expect an editor to go through a long speech as a whole of unquestionable public importance, and decide on the spur of the moment whether every passage of it meets the requirements of the Statute.

But, admitting there is a grievance, how can it be remedied? The public will never consent to the law of libel being so relaxed as to permit newspapers to discuss people's characters with the freedom extended to such discussion by elderly single ladies over their afternoon tea. Indeed, as shown by the Slander of Women Act, 1891 (54 & 55 Vic., c. 51), the tendency is rather to tighten the law of slander than to loosen the law of libel. The advocates of greater

freedom for the press recognise this, and look in that direction for a remedy. It has been suggested that the proprietor of a newspaper when proceeded against for a libel appearing in a report of a speech should be entitled to join the speaker as a co-defendant, and that the jury should be entitled to apportion the damages between them. Formerly I was strongly of opinion that subject to some modifications this suggestion would, if adopted, supply a complete and safe remedy (see "Law of the Press," pp. xxiv. & xxv.). Subsequent experience and reflection have not supported that opinion. I cannot but think that it would most probably be used as a means of harassing political opponents who venture to speak freely, and whose speeches are now published with impunity only because the speaker himself cannot be sued. In this way the change would probably lead to more actions for libel against newspapers than at present, and at the same time would put eminent public men, whose speeches are reported, in a worse position as regards freedom of discussion of public affairs than are any other members of the community. While in the cases where the speaker might properly and justly be called upon to pay part of the damages—that is, where he was put up for the very purpose of damaging an opponent—the suggested remedy would be useless, as such persons are usually not worth powder and shot.

The second point on which the distinction between libel and slander is alleged to press unfairly on newspapers is this: The law of libel in not giving a definite statement of what actionable libel is, leaves it open to any one whose name is mentioned in a newspaper to sue that newspaper for libel. This complaint seems to me much better founded than the previous one. And undoubtedly it is a practical grievance. Every lawyer knows that half the actions for libel brought against newspapers, are brought in the hope of damages—sometimes merely

of costs—by persons whose characters are not in the slightest degree injured by what the newspaper has published regarding them. When this is not the case frequently the injury is of the slightest possible character and more hurtful to the plaintiff's vanity than his reputation. The difficulty is to find a remedy for the evil. The jury, which was so effectual in putting a stop to persecution for criticism of the government, is of no use here. Its sympathies are always with the plaintiff, and the newspaper being, like a public company, an impersonal thing, juries are merciless in the damages they give against it. Even where they think the action should hardly have been brought, so trifling the injury, they usually think that since costs have been incurred, the newspaper, which began the bother, should pay them.

Now the law of libel exists to protect character not conceit, and means should be taken to restrain actions which are frivolous, or in which the injury is of the slightest possible description. This might be done in two ways. The absolute right given to plaintiffs in libel actions to have the case tried before a judge and jury (R.S.C., O. 36, R. 2) might in some way be modified. No doubt the defendant should always be given, when he wants it, the protection of a jury, but more frequently than not the jury is wanted by the plaintiff because he expects to get from it more than justice. The chief function of the Court of Appeal as far as libel actions are concerned, has lain of late in the reduction of excessive damages given by juries. If the plaintiff were entitled to have the case tried by a judge, appeals on this ground would not be so frequent.

Another and more effective mode of not merely restraining frivolous actions for libel, but also of restraining the publishing of blackmailing libels, would be in the adoption of a practice compounded of that established by the Vexatious Indictments Act (22 & 23 Vict., c. 17), and made

applicable to criminal proceedings for libel by the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict., c. 60, s. 6), and that applied by Order XIV., R.S.C., to actions for liquidated demands. The procedure suggested would consist in giving both the plaintiff and defendant a right to bring the action before the Judge in Chambers for preliminary investigation. The judge, after examining the libel and hearing what each party had to say, might, if he thought there was no substantial question to be tried, either dismiss the action absolutely or on terms, or enter judgment for the plaintiff with such damages as he thought just. Either plaintiff or defendant should be entitled to appeal from the judge's decision, and have the case tried out in Court, but only upon giving reasonable security for costs, which would be payable by the party appealing in case the result of the trial was to affirm in substance the decision of the Judge in Chambers. Such procedure would do much to put an early stop to frivolous actions, and would, at the same time, discourage the publication of blackmailing libels by penniless and disreputable journalists, who know the libel to be false, but rely on the chance that the person libelled will be afraid to go into the witness-box for cross-examination—a kind of libel not by any means unknown in the City.

There are other points upon which the representatives of the press, in company with many others, have perhaps some cause of complaint. The most important of these is the right the Courts now claim to restrain the publication of what appear to be libels, and the practice, which till lately amounted almost to a scandal, of fining and imprisoning for what any judge of the High Court chose to consider a contempt of Court. This article is, however, already too long, and so it will have to suffice to point out that the decision in *Monson v. Tussaud's, Limited* (1894, 1 Q.B., 671), has placed the practice as to injunctions on a

more certain basis, while a great check has been put on the abuse of process of contempt by the weighty and most valuable decision of the Lord Chief Justice and Mr Justice Wright in the case of the *Queen v. Payne and Cooper* (1896, 1 Q.B. 577).

On a review, then, of the law applicable to them, it seems absurd to contend that the press in general, and newspapers in particular, do not enjoy very great liberties. Their freedom to discuss public affairs is almost, if not altogether, unrestricted, and this, after all, is the most important and most useful part of what is called liberty of the press. Their freedom to discuss private affairs is no doubt restricted, and perhaps severely restricted ; but if newspaper discussion of these were as free as verbal discussion is, life would be intolerable. The only serious grievance of which they can complain is, that the vagueness rather than the severity of the law leaves them open to considerable damage and annoyance by frivolous actions or actions based on paltry grounds. Unfortunately this grievance is not peculiar to them. All the same, it is capable of remedy, and it would be to the credit of English justice if it were remedied with the least possible delay.

J. ANDREW STRAHAN.

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### III.—SIR FRANK LOCKWOOD : NOTES BY A FRIEND AT THE COMMON LAW BAR.

**A**N old political opponent of the late Sir Frank Lockwood, in addressing a meeting the other day, used these words : “ None of us can remember an occasion “ of the death of a public man which has caused such “ universal regret throughout the country. In the world “ of politics, of law, of letters, of the drama, and of “ society his loss will be long and deeply deplored.” And,

in truth, the press has joined with one voice in commendation of Lockwood's great parts, his generous and genial disposition, and in expressions of profound regret for his untimely decease.

As was perhaps natural, in view of the conspicuous position which he occupied in society, the obituary notices have been directed to the social and political rather than to the professional aspect of his career; although the latter is, as it seems to us, by no means devoid of interest.

Some twenty years ago, in the spring of 1878, when the present writer made the acquaintance of Lockwood, he had been called to the Bar barely six years and was just beginning to secure, both in town and on the North-Eastern Circuit, a certain amount of civil business. So small, however, were these beginnings that, when a student of the Inner Temple presented himself with a request to be admitted into his chambers as a pupil, Lockwood was greatly diverted and refused to entertain the proposition on the ground that it would be a sheer fraud upon the student. But the latter, on the advice of the late Mr. Justice Cave (then one of the leaders of the North-Eastern Circuit), persisted in his application and ultimately prevailed, Lockwood declaring that the young man must clearly understand that he would be and continue *in statu pupillari* "at his own risk and expense." At this time, however, a rapid advance took place, and, within a twelve-month, the chambers were full of work, principally from the West Riding of Yorkshire, where for some two or three years Lockwood had enjoyed an extensive practice at Quarter Sessions and in the Crown Court at the Assizes. In those days Quarter Sessions (at any rate in the West Riding) were well worth the attention of a young barrister: appeals were plentiful, the Summary Jurisdiction Act of 1879 had not come into operation, and Lockwood frequently returned at the end of the week the richer by a hundred

guineas or so. He was especially successful in the defence of prisoners—an art in which he excelled from the first. His bold and vivacious style, which took the jury completely by surprise, proved singularly effective, coupled as it was with the possession of a ready wit and an intuitive perception of the temperament of men, whether witnesses or jurors. At one Sessions in 1879, Lockwood, in the hearing of the present writer, defended in eleven cases, and secured no less than ten acquittals. His defence of the notorious Charles Peace, though it really afforded him but little opportunity of displaying his greatest qualities, considerably enhanced his reputation, and extended his fame beyond the limits of his own Circuit. Whilst greatly beloved by his brethren at the bar, he found amongst their ranks—as every rapidly successful barrister does—a formidable array of critics, some friendly, some captious, all outspoken. His inimitable powers as a defender of prisoners were never challenged, but it was on occasion declared that his success would be confined to the Criminal Courts. As we have already intimated, this judgment he speedily falsified by the acquisition of a considerable civil business, mostly, however, in actions for libel or breach of promise, or in “running down” cases; and, as early as 1879, he was frequently engaged single-handed against Cave, Wills and other distinguished leaders of the circuit. The critics, frankly admitting the skill he displayed in the handling of these cases, then pronounced him incapable of dealing with “heavier” causes, and prophesied failure as a “leader.” In 1882, despite these prognostications, which were perfectly well known to him, he applied for and obtained silk at the early age of thirty-six. His decision was amply and immediately justified by results. Cave had by this time become a Judge, and soon after Wills was also raised to the Bench. Lockwood at once sprang into a commanding leading practice, which he had

no difficulty in retaining during the few years that he continued to go Circuit. About this time, the critics discovered that, although phenomenally successful with north-country juries, his qualities were not such as to secure a like measure of success in London. Here, again they were proved to be mistaken, for in a few short years his practice in London became so large and lucrative that he only went "special" to the circuit towns; and this business in town he continued to enjoy until compelled to withdraw from private practice on his appointment as a law officer of the Crown in October, 1894. His income from the Bar was probably far larger than many of his professional brethren supposed. Everyone knew that, when litigation arose in the sporting or dramatic world, he would certainly be retained, that in every *cause célèbre* he would be sure to hold a brief; but possibly few of those who saw him in the Common Law Courts, the centre of a merry group of laughing friends, were aware of the number of briefs he held in heavy witness actions in the Chancery Division, or of the large fees he received for defences at the Old Bailey—and none certainly knew of the many anxious hours he spent in conference advising on matters of the utmost privacy, perhaps not resulting in litigation, yet involving the honour and happiness of the client. The last important cause in which he was engaged was the protracted libel action against Mr. Jerome, tried a few months ago, and his conduct of the defence in that action has been described by Sir George Lewis as one of his most brilliant and successful efforts.

It was frequently said of him that he was not "a lawyer," and it is beyond doubt that he was not (nor did he pretend to be) acquainted with law as a science. He did not affect any familiarity with "that codeless myriad of precedent," through which, according to the poet, the successful barrister must beat out a pathway to wealth and fame; but he had a



wonderfully good idea of what were the important issues in a case, and what facts it was necessary to prove in order to succeed on those issues. Whilst at all times expressing regret that he had not read more law in his early days, he would laughingly claim to be judged by results, and would, perhaps, call attention to one of the disasters which so frequently befall the clients of those pundits who are equipped with such great store of learning that they disdain to acquire the simple arts of advocacy.

He was not a student of books, legal or otherwise, yet he often astonished his intimate friends, who were, of course, familiar with what has recently been described as his "somewhat stormy undergraduate career" at Cambridge, by displaying an unexpected and, at times, quite extraordinary acquaintance with the contents of books. The fact was that he mixed and conversed largely with men who *did* read, and his clear brain and retentive memory stood him in good stead: "It is the vice of scholars to suppose that there is "no knowledge in the world but that of books . . . . "the light of books is diffused very much abroad in the "world in conversation and at second hand; and besides, "common sense is not a monopoly, and experience and "observation are sources of information open to the man "of the world as well as to the retired student."

Moreover, when Lockwood could be induced to really grapple with points of law, his naturally clear and powerful—if somewhat undisciplined—intellect enabled him to deal with the most complex legal problem. In 1886, a rating appeal came before him as Recorder of Sheffield. The hearing lasted six days, and the case involved large and complicated issues of fact, and also several novel and difficult questions of law. No one who read his lucid and exhaustive judgment—which was approved in all respects by an extremely strong Divisional Court—could ever again entertain a doubt as to his capacity to deal with any such

abstract problems as can by possibility arise in the Courts of Common Law.

Lockwood was a forcible cross-examiner as well as a bright and attractive speaker; but the quality to the possession of which he was, in truth, indebted for his success was that which is known as "tact" in the conduct of the case, the capacity for forming a rapid and yet accurate judgment of the effect produced, or likely to be produced, by a particular witness or argument, as well on the Court as on the jury—the rarest and most valuable of all the gifts an advocate can possess. As everyone knows, he was too, a man of infinite humour, and his humour was contagious. We have heard many advocates who could amuse the gallery, some who could amuse the Judge, and a few who could amuse the jury, but we never heard any advocate except Lockwood who could compel his opponents to share the general hilarity. It is, of course, impossible to reproduce the effect caused by his sallies of wit, so much depended on their freshness and palpable spontaneity, on the presence, tone, and gesture of the speaker.

"A jest's prosperity lies in the ear  
Of him that hears it."

We will endeavour, however, to recall a single specimen of his method. Some six years ago a man and his wife sued an omnibus company for £500 in respect of injuries caused to the wife by the negligence of one of the company's servants, and the case was presented to the jury in a grossly exaggerated form. The evidence of special loss or expenses was exceedingly vague and slight, but the husband declared that his wife, who was a very fat woman, weighing some fifteen stones, had prior to the accident weighed eighteen stones. It appeared at the hearing that, immediately after the accident, the husband had written to the company, alleging that his wife's injuries would certainly prove fatal, and claiming

£50 compensation, a proposal which the company declined to entertain. Lockwood, for the defendants, went to the jury in this strain:—"I will spare you further trouble in this matter, gentlemen, by at once accepting the plaintiffs' estimate of any damage they may have sustained. The case, you will perceive, resolves itself into an application of the principle known, I believe, to arithmeticians as the rule of three. Its operation here is very simple. When the husband regarded the accident as certain to prove fatal he claimed, as we find, £50—that, you will observe, was as for a 'total loss.' His wife—at any rate the bulk of her—has fortunately been spared to him, and she apparently enjoys, at the present time, the most robust health, though her spouse complains that, whereas she formerly scaled eighteen stones, her weight has now been reduced to fifteen—a loss of three stones avoirdupois. The problem for you to solve, therefore, stands thus: As eighteen is to three, so is £50 to the amount of your verdict. With the assistance of my learned junior I am able to propound as a solution of the problem—£8 6s. 8d. But, as my clients have throughout desired to deal with the plaintiffs in a more liberal spirit than you will probably consider they deserve, let us say in round figures £10." The Judge was highly amused, and briefly intimated that the question was eminently one for the jury, who promptly stated that they accepted "Mr. Lockwood's figure of £10." This was, indeed, a perfectly just and proper result; but there were many in Court who thought that the verdict would undoubtedly have been for £25, or perhaps even £50, had not a figure been so ingeniously suggested to the jury by the defendants' advocate.

With all his passion for humour and caricature, Lockwood had a vein of genuine earnestness in his character—he was a staunch friend, a generous foe, and we believe his memory will long be fondly cherished at,

the English Bar, to which he was himself so deeply attached. As Mr. Augustine Birrell, writing of his funeral, has said: "Every one felt the poorer for his death, the richer for his memory. The church in Walton Street was full of men he had caricatured and made fun of, "Not one of them could have trusted himself to speak as "the coffin was carried up the aisle."

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#### IV.—THE LEGAL DISQUALIFICATION OF WOMEN FOR ELECTION TO SCHOOL BOARDS.

HAVING regard to the considerable public interest which for many reasons was centred in the recent triennial School Board elections, and to the fact that the names of several women, of whom some were elected, figured on the list of candidates, it may be not uninteresting to draw attention to the existing state of the law as to the eligibility of women for membership of School Boards.

It is true, indeed, that women have frequently been elected and have taken their seats as members of School Boards, and that no objection has been made to their election, and no petition presented to test its validity. This, however, can in no way affect the legal aspect of the question, which we propose to examine and with which alone we are here concerned.

That by the Common Law of England a woman is absolutely disqualified for being elected to or holding any office of a public nature, or for exercising any public function, appears, in the light of recent authoritative decisions, to be a well established legal proposition. The records have been searched in vain for authentic instances of the admission of women to the public offices, parliamentary or municipal, of the Common Law. Thus

no single instance can be adduced of a Peeress being recognised as a member of the House of Lords, of a woman being elected member of Parliament or Mayor of a borough. All the old writers on the Common Law are agreed as to the legal disqualification of women for membership of the House of Commons, and it has in fact never been seriously disputed. In the year 1885, however, Miss Helen Taylor presented herself as a parliamentary candidate for Camberwell. She herself presented her nomination paper, but it was rejected by the Returning Officer, and no subsequent proceedings were taken.\*

The exclusion of women from judicial office (apart from the modern provisions of the Judicature Acts imposing certain statutory qualifications) would appear to rest on the same basis as their Common Law disqualification for public office.

The Common Law rule is not, indeed, without exception. The exceptions, however, are of such a nature and so isolated as rather to point the generality of the rule. For example, with respect to the office of Sheriff, there is the "solitary exceptional case," as it has been termed,† of the shrievalty of Westmoreland which Ann, Countess of Pembroke, took by descent, pursuant to a grant to her ancestor and his heirs general. It should be observed that the office of Sheriff (as also the Common Law office of Constable, which it has been suggested was capable of being held by a woman),‡ is an office which could be, and, in fact, usually is discharged by deputy. There appears, indeed, to be some authority for the proposition that the grant to a woman of an office which may be exercised by a substitute or deputy will be good.§ Women have also by

\* See *Law Journal*, 28th November, 1885, at p. 695.

† L.R. 4 C.P., p. 396.

‡ See 2 Hawk. Pleas of the Crown, chap. 10, s. 37.

§ See Comyn's Digest, Tit *Officer*.

custom been recognised as eligible for the office of Overseer of the Poor,\* and, under the particular circumstances of one case, it was held that a woman might be chosen as sexton.†

With regard to the disability of women to exercise the public function of voting at elections, for several hundred years no instance of its exercise by women is to be found, and Coke in the reign of James I. considers it as beyond doubt that women were incapacitated for voting at parliamentary elections.‡ This view appears to be supported by the judgments in the case of *Olive v. Ingram* § in the reign of George II., and, in 1868, it was expressly decided in *Chorlton v. Lings*|| that women are subject to a legal incapacity for voting at the election of members of Parliament.

The principle of the Common Law as to the legal disqualification of women for public office has more recently been clearly and unequivocally enunciated in the judgments of the full Court of Appeal, composed of Lord Coleridge, C.J., Lord Esher, M.R., Cotton, Lindley, Fry, and Lopes, L.JJ., confirming the judgments of Huddleston, B., and Stephen, J., in the case of *Beresford-Hope v. Lady Sandhurst*,¶ in 1889. The express decision in that case was that women are incapacitated from being elected members of a County Council. Lord Esher, M.R., in the course of his judgment, said: \*\* “I take it that by neither the Common Law nor the Constitution of this country from the beginning of the Common Law until now can a woman be entitled to exercise any public function. . . . This being the Common Law

\* *Rex v. Stubbs*, 1788, 2 T.R. 395; see also per Lord Esher, M.R., in *De Sousa v. Cobden* [1891] 1 Q.B., at p. 691.

† *Olive v. Ingram*, 7 Mod. 263.

§ 7 Mod., 263.

¶ 23 Q.B.D. 79.

‡ 4 Inst., 5.

|| L.R. 4 C.P. 374.

\*\* 23 Q.B.D., at pp. 95, 96.

of England when you have a statute which deals with the exercise of public functions, unless that statute expressly gives power to women to exercise them, it is to be taken that the true construction is that the powers given are confined to men."

A specious argument was raised and disposed of in the same case, to the effect that women must be deemed to be within the scope of the Local Government Act, 1888,\* by reason of the provision of Lord Brougham's Act † that in Acts of Parliament, unless the contrary intention appears, words importing the masculine gender shall include females. In *Chorlton v. Lings* it had also been argued that under the same enactment the word "man" in sect. 3 of the Representation of the People Act, 1867, ‡ ought to be construed to include women. In both cases, however, it was held that Lord Brougham's Act did not apply, that the provision was merely interpretative, and not capable of conferring any rights or qualifications which were non-existent at Common Law. The soundness of this conclusion cannot be doubted.

In the later case of *De Souza v. Cobden*, § in 1891, a woman was elected a member of a County Council, and twelve months elapsed without any proceedings being taken to test the validity of her election. After the expiration of that time she acted on several occasions as a member of the County Council, and an action was brought against her to recover the penalties imposed by sect. 41 of the Municipal Corporations Act, 1882, || for sitting and voting when disqualified. Sect. 73 of the same Act

\* 51 & 52 Vict., c. 41.

† 13 & 14 Vict., c. 21, s. 4; see now the Interpretation Act, 1889, 52 & 53 Vict., c. 63, s. 1 (1) (a).

‡ 30 & 31 Vict., c. 102.

§ [1891] 1 Q.B. 687.

|| 45 & 46 Vict., c. 30. This section was applied to County Councils by the Local Government Act, 1888, 51 and 52 Vict., c. 41, s. 75.

provides that every municipal election, not called in question within twelve months after the election, either by election petition, or by information in the nature of a *quo warranto*, shall be deemed to have been to all intents a good and valid election.\* The defendant, nevertheless, was held liable to the penalties. It would, as Lord Esher pointed out,† be a most illogical construction of the legislation to hold that "although a woman is so absolutely incapable of being elected that votes given for her are to be considered as thrown away, and as not having been given; that, nevertheless, if she is *de facto* elected, and the period of twelve months elapses during which no one is willing to question the election, she is entitled to sit and vote." Lord Justice Fry, in his judgment,‡ asks the question: "Is the election of a woman, for instance, like the election of a dead man or that of an inanimate thing which cannot be elected"? Without directly answering the query, he proceeds to say: "I am inclined to think that this is not an election which can be made good under the section; that, as the law stands, a woman is absolutely disqualified by nature from being elected to the County Council, and that her election is a mere nullity."

In the same case Lord Esher again states§ that by the Common Law of England women are not in general deemed capable of exercising public functions, though there are certain exceptional cases where a well-recognised custom to the contrary has become established, as in the case of Overseers of the Poor; and of course if women are specially mentioned in an Act of Parliament they will be qualified. The County Council is a new institution which did not exist before the Local Government Act of 1888; it is the

\* This is applied to County Councils by virtue of sect. 75 of the Local Government Act, 1888.

† [1891] 1 Q.B. at p. 691.

‡ *Ibid.* at p. 692.

§ *Ibid.* at pp. 690, 691.

[ 51 & 52 Vict., c. 51.



creation of, and depends entirely on that Act. If women are not qualified by the Act they are clearly not qualified at Common Law, and, therefore, they are altogether incapable of being elected.

The importance, and, indeed, the finality, of these judgments with regard to the line of argument set forth in this article is at once apparent when it is pointed out that for the purpose in question a School Board is on precisely the same footing as a County Council. As regards the legal qualification of women for membership no distinction can be drawn between a County Council and a School Board. They are both bodies of statutory creation. What is true of the one applies with equal force to the other.

Now, as we have seen, women are clearly incapable of being elected members of County Councils, because the Local Government Act, 1888, which created those bodies, contains no provision removing the Common Law disqualification of a woman for public office. The Elementary Education Act, 1870,\* to which the creation of School Boards is due, contains no provision exempting women from their Common Law incapacity for election to public office, and no provision expressly enabling them to be elected as members of School Boards.† Nor has any Act subsequently been passed for that purpose.

This appears the more remarkable since the necessity for enabling legislation has been recognised in the case of all the public offices recently created by the Local Government Act, 1894,‡ for which it was considered desirable that women should be eligible. Thus the Act contains an

\* 33 & 34 Vict., c. 75.

† The School Board Triennial Election Orders, issued under the provisions of the Elementary Education Acts, with regard to the nomination of a candidate, merely require the candidate to be a "person of full age."

‡ 56 & 57 Vict., c. 73.

express provision that "no person shall be disqualified by sex or marriage for being elected a Parish Councillor," and there are similar provisions with regard to the offices of Guardian, Rural District Councillor, and Urban District Councillor,\* the statute, therefore, legally qualifying women for election to such offices, to which otherwise they could not be elected.

It is interesting to note, also, that the ineligibility of women for public office, in the absence of statutory authority, has been recognised by the Government as recently as last year, when a statute termed the Poor Law Guardians (Ireland) (Women) Act, 1896,† was passed, for the express purpose of enabling women to be elected and act as Poor Law Guardians in Ireland.

From the foregoing considerations, the assertion appears to be justified that, as the law at present stands, women are absolutely disqualified for election as members of School Boards,‡ and that the *de facto* election of a woman should be declared void upon petition. Whether or not this view be correct, it is certainly desirable, in the public interest, that the matter should receive a judicial, if not a legislative, determination.

The expediency or policy of allowing women to become members of School Boards is outside the province of this article, which affects merely to discuss the subject from an abstract legal point of view. At present they are, in fact,

\* *Ibid.*, ss. 3 (2), 20 (2), 23 (2), and 24 (4).

† 59 & 60 Vict., c. 5.

‡ Most of the text-book writers have either overlooked the point or treated it superficially. Sir Hugh Owen, in his work on the *Elementary Education Acts*, 17th ed., 1891, at p. 125, says: "It will be observed that no qualification whatever is prescribed by the Act for a candidate for election as a member of a School Board. Females as well as males . . . are eligible for election." Mr. S. H. Day, the Editor of *Rogers on Elections*, on the other hand, expresses a brief, but incisive, opinion as to the disqualification of women for election. (*Rogers on Elections*, Pt. II., Vol. II. (Municipal, etc.), 17th ed., 1894, at p. 29.)

under a disqualification that can only be removed by statute; and, as was said in one of the cases above referred to,\* when the injustice of excluding females from the exercise of the franchise was urged upon the Court, "it is for the Legislature to consider whether the existing incapacity ought to be removed."

G. H. B. KENRICK.

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#### V.—FACILIS DESCENSUS AVERNI.

WE are now able to estimate the mischievous effects of that laxity of doctrine which has induced so many exponents of International Law to regard with approval the fashion of Pacific Blockade. That fashion, introduced with hesitating deprecation, and then feebly extenuated as a blunder, has become frequent in practice, and the subject of the complacent regard of diplomatists. The conception of Independent Sovereignty, it is not too much to say, has, in consequence, received an injury which is rapidly proving fatal. Foreign armies land, light-hearted, on friendly shores. British troops appear in Corinto, Greeks in Crete, Russians in Corea, in happy confusion of tumultuous jurisdiction.

For final and thorough information on any question of science, we naturally look to Germany. And in this new science of International relations, she is, indeed, a profoundly instructive guide. In time of undisturbed peace, and in satisfaction of a claim which had hardly been heard of outside the respective embassies of the powers in question, German forces, last November, seized on a fortified port of the Emperor of China, fired on his troops,

\* *Chorlton v. Lings*, L.R. 4 C.P., at p. 396.

and worked their military will on his subjects. There has been nothing like it since the taking of Strasburg.

Do not let it be said that China has no rights in law. All that is a matter of degree. Germany acts thus to China to-day: she would act thus to Greece to-morrow—to Denmark, next week—to the United Kingdom (previously well pulverized), next year. Rights, and the law which sustains them, depend, after all, on the enlightened feeling of the world. In the forum of this tribunal, no argument of counsel, however eminent, will suffice to establish that the broad features of natural justice are not the same for Pekin as for Paris.

It is not necessary to be affected by the absurd outcry against Germany, which we have been pleased, for the last two years, to call "patriotism," in order to appreciate the significance of this event. Taken in conjunction with the minor acts of lawlessness lately exhibited, and with the steadily accelerated frequency of their occurrence, the invasion of China "*sans que la paix soit rompue de notre part*,"\* points to the break-up of International Law, and the sinking of the nations into an amorphous morass of populaces—not without its horizontal strata, volcanically organic.

The outlook seems extremely dark, and one is inclined to believe that Mr. Hall's gloomy prophecy of a coming age of disregard for the obligations of International Law will not need to wait for the next great war for its fulfilment. In fact, scarcely any war seems possible now; but only confused battles and anarchic contests, out of which may emerge, in the far future, States which shall know their own mind, and respect their neighbours'.

Or, can it be possible that the German Emperor—the most brilliant and capable sovereign on the Continent

\* Louis XIV.'s celebrated declaration on the invasion of Holland.

of Europe—whose solicitous care for the maintenance in its integrity of International Law has been from time to time so signally manifested, is endeavouring to shew, by means of what is so often, with strange inaccuracy, termed an object-lesson, the vital necessity of a Society of Nations never for an instant infringing the principle on which it is founded? Is the lesson this, that it is not yet too late to retrace the first steps down the declivity of a denial of National Independence, which have made such a remarkable development as the taking of Kiao-Chou possible? If so, we shall do well to learn it while there is time. Rock crystal may be chipped and broken. By the process, it may be improved in form, or the reverse; nevertheless, it remains crystal—transparent and clear. But touch the mother crystal with the hammer, and the whole mass loses its former nature, and degenerates into a cloudy stone. Territorial independence occupies a similar vital position at the root of International Law. The particular rules of that law may be totally changed from time to time with comparative ease and safety. But tamper ever so little with its fundamental postulates, and the whole system sinks into ruin.

It is therefore an imperative duty jealously to guard from infringement the great principle of Territorial Sovereignty, and to abstain with the utmost care from invoking, as excuses for ignoring its obligations, either the abnormal position of Oriental nations, or the seductive conveniences of summary dealing with weak Occidental ones.

TH. BATY.

## VI.—THE ORDER OF BARONETS.

**I**N the early part of last autumn, much surprise was caused to Members of the Order of Baronets by the publication, in the daily newspapers, of an order from the Crown, giving to children of legal life Peers not only the style of Honourable, but also a precedence immediately before Baronets. This illustrious body was thereby aroused to action, believing that the said order was a contravention of their charter, and therefore a fit subject for inquiry and protest. But apart from this, there is another and a greater evil, viz., that at the present time over fifty individuals, without any warrant or authority, are assuming the style and dignity of a Baronet, their right thereto being known to be either non-existent or highly problematical.

The means provided by the Crown for the control of the succession to Baronetcies is the due registration of pedigrees in the College of Arms for Baronetcies of England, Great Britain, and the United Kingdom; in Lyon's office for Baronetcies of Nova Scotia; and in Ulster's office for Baronetcies of Ireland. Unfortunately there is no provision of any sort enforcing the continued registration of pedigrees, which is at present optional, and consequently no check at all upon abuses of succession. Those Baronets who have registered, undoubtedly have established their right in the same manner as a Peer establishes his claim to admission to the House of Lords. But many have not. If, however, registration were made compulsory and up to date, it would be impossible for any further abuses to creep in. Continued and reiterated assertion of right, where no right exists, creates in public opinion a prescriptive right to the dignity, and it is most desirable that this should be prevented.

A meeting was held at the Bristol Hotel, London, on November 10th of last year. It consisted of many prominent Baronets, under the presidency of Sir Lambton Loraine, Bart. A Provisional Committee\* was formed to consider the objects of the meeting, and to form a Society, comprising the whole Order of Baronets, the sons of baronets, heirs presumptive of Baronets, and brothers of Baronets in the succession, all being of full age; the special point being to endeavour to prevent the wrongful assumption of titles, without in any way disturbing the rights of the holders of undoubted titles, or putting them to any expense in connection with the legal proof of their rights.

The Order of Baronets, or hereditary Knighthood, was founded by King James I. in May, 1611, for the purpose of obtaining assistance in subjugating and settling the Province of Ulster in Ireland. The Province having become vested in the Crown by the attainder of its previous owners, the King conferred grants of land upon those who would maintain a body of thirty soldiers there for three years. The person who undertook this charge was created a Baronet. He was allowed (*inter alia*) to add to his family arms those of the Province, commonly called "the bloody hand"; and the Sovereign undertook that no dignity *should ever be created* to intervene between Baronets and the Peerage. At its first institution, the Order was limited to two hundred, but now it contains nearly six times that number. The creation was by Letters Patent, and it was essential for the claimant to be of honourable descent, and to have an estate of £1,000 a year in land. Subsequently a Commission was established under the Great Seal to confer the dignity, but this Commission lasted for a very short time, and the ancient

\* This Committee has already obtained temporary offices at 58, Coleman Street, in the City of London.

form of Letters Patent was again reverted to. In 1612, on the publication of a Decree respecting the precedence of Baronets, their eldest sons, when of full age, were granted the privilege of claiming the honour of Knighthood.

A clause to this effect was thenceforth inserted in every Patent until 1827, when George IV. ordered that this clause should be omitted from all future Patents. The right, therefore, is only vested in those Baronetries created prior to 1827. The only instance of a Baronetcy being conferred upon a female, occurs in the case of Dame Mary Bolles, of Osberton, in Nottinghamshire, who in 1635, received the dignity of Baroness of Nova Scotia, with remainder to her heirs whatsoever. The Baronets created between the years 1707 and 1801 are termed Baronets of Great Britain. Those created from 1801 to the present time are termed Baronets of the United Kingdom.

King Charles I., in 1625, instituted the Baronets of Scotland and Nova Scotia. This Order was for the encouragement of those who planted and established the Province of Nova Scotia in America.

Baronets of Ireland followed the establishment of the English Baronetage. Their Order was first conferred in September, 1619.

By the respective Unions between England and Scotland, and Great Britain and Ireland, the Baronets of Scotland and Ireland were granted precedence according to their dates of creation among the Baronets of England and of Great Britain. The dates of creation of all Baronetries conferred subsequently to 1801 naturally placed them after all others of the above branches.

The above Committee of the 10th November, 1897, is by no means the first occasion on which Baronets joined hands together for the purpose of protecting their common interests. Nearly sixty years ago (July 15th, 1840) a "Committee of the Baronetage for Privileges" was founded



for the purpose of maintaining the rights and privileges of the Order, and various rules were adopted for the regulation of business. This was followed by a "First Anniversary General Meeting," on the 4th June, 1841, when a report was presented by the Committee, adverting to the representative character which it enjoyed, the powers vested in it, the permanent capitular purposes for which it was formed, the grounds which were held to favour the right of Baronets to carry Supporters and other exterior heraldic ornaments, and reporting, further, that the ancient style of "The Honourable," which originally had been ascribed to the Order by its Royal Founder and by society in general, had been revived; that from the commencement of the revival, in 1835, only eleven Baronets out of 1,000 members of the Order had dissented from it, but without assigning any reasons for their doing so; that his Majesty King William IV. had communicated that he was fully satisfied that the Baronets had acted with great propriety in the steps which they had taken, and that the justice of their contention had not been questioned from any quarter competent to offer an opinion on the merits of the subject.

At a meeting held on the 18th September, 1841, specially called to consider the applications for exterior heraldic ornaments of a number of Baronets who desired to act on the Resolutions of the General Meeting above referred to, an exposition was made by the Hon. Secretary of the reasons why the Arms of the said applying Baronets should respectively be outwardly augmented with Supporters, a Coronet, Mantle, Helmet, Collar of S.S., Wreath, Badge, and Riband; when it was resolved that the Arms of the said Baronets should be registered in the books of the Committee, with the additaments enumerated, and that the said Arms should shew forth the mode whereby in future the Coats of all other applying Baronets of the several creations should be outwardly charged. .

The Committee came to these conclusions after the most mature deliberations, and after hearing evidence and arguments, which, in their opinion, fully authorised them, and it was resolved by them, as of dutiful respect to the Crown, that a representation, embodying the proceedings and the conclusions, should be placed in the hands of the Prime Minister, in order that Her Majesty might be made officially cognisant of the same, and that through her responsible minister the wishes of the Order might be conveyed to her, viz., "that She would be graciously pleased to honour the proceedings with Her favour and protection."

Pursuant to this Resolution a deputation from the Committee waited on the Prime Minister (Sir Robert Peel) at his official residence in Downing Street, on 13th December, 1841, and placed the Representation in his hands, together with an Address, expressing the satisfaction of the Committee that the conclusions had been arrived at under the administration of a Statesman who had pledged himself and his colleagues on entering office "to act as men determined to maintain on their ancient foundations the institutions of the Monarchy," and expressing the confident hope of the Committee that an Order created for the highest State purposes and conferred by successive monarchs for services deemed worthy of a perpetual mark of family distinction might freely use and enjoy every right and privilege incidental to it by the chartered engagements of its Royal Founder. The claims then put forward on behalf of the Baronetage were:—

1. To be considered, not as the head of the *nobiles minores*, but as the lowest class among the *nobiles majores*, because their titles, like those of the higher nobility, are both hereditary, and created by patent.

2. To have place and state at all Royal or National solemnities.

3. To enjoy the style and title of "The Honourable."

4. To wear the collar S.S.
5. To be decorated with a riband and badge.
6. To have the title of Baronetess ascribed to their wives, in order to distinguish them from the wives of Knights.
7. To have the privilege of claiming Knighthood restored to their eldest sons.

The Committee having, since its institution, had its attention drawn from various quarters to the necessity of adopting some measure to remedy the abuses which existed in the Baronetage from the irregular assumption of titles, appointed a deputation to wait upon the Secretary of State for the Home Department to represent to him the said abuses, and to request his aid to procure for the Committee authority to hear, consider, and report their opinion to the Crown upon the cases of all persons in future claiming dormant Baronetcies, or succeeding to Baronetcies by collateral succession, in the same manner as the Committee for Privileges of the House of Lords hear, consider, and report to the Crown in cases of claim to peerage dignities. This scheme, however, did not meet with the approval of the Home Secretary (Sir James Graham).

The Committee, nevertheless, feeling that the right existed in the Order as an hereditary estate of dignity, to see that no person should take up the title of Baronet surreptitiously, considered that the time had arrived when a stop ought to be put to a system which tended materially to impair the consideration of the Baronetage, and submitted at a General Meeting in 1841 that the Committee should resolve and declare "that in future no person taking up a Baronetage after a dormancy, or succeeding to such a dignity by collateral succession, shall be recognised, held, or considered a Baronet by the Order, unless he shall bring his claim under the cognisance of the Committee for Privileges, and record the evidence by which his right is

instructed, in the books of the Committee." The Committee further recommended that a great Roll should be kept similar to that which exists in the Peerage, and that every Baronet should be invited to sign the same that there might be an authentic registry in the possession of the Order of its true and lawful members. A Memorial was presented to the Committee by R. Broun, "Master" of Colstoun, and Hon. Secretary to the Committee, setting forth the various proceedings had in respect to an application preferred by him for Knighthood in 1836 as the eldest son and heir apparent of a Baronet of Scotland and Nova Scotia of ancient creation, and praying the interposition of the Committee in his case. The Committee having taken carefully into their consideration the allegations embodied in this Memorial, and the Letters Patent of the 10th and 14th years of James I. relative to Knighthood, the Statute of the King and the Estates of Scotland, made and passed on 28th June, 1633, the Order of the 8th year of George IV., the Address made by Mr. Broun before the Attorney and Solicitor-General for England on 4th April, 1840, and various other documents, came unanimously to the conclusion that the course followed by the Law Officers of the Crown in the case of Mr. Broun's application for Knighthood was in direct contravention of the constitution of the Baronetage, the Statute Law of the Realm of Scotland, the Articles of Union, the obligations of the Coronation Oath, and the unbroken precedents of 230 years. They recorded, on behalf of the Baronets of the several creations of the United Kingdom, their unanimous protest against the opinion of the Attorney and Solicitor-General for England, upon which the Lord Chamberlain had arrived at the conclusion that it was not his duty to present Mr. Broun to Her Majesty for Knighthood; and finally they called upon Sir Robert Peel, as the head of the Government, and as the immediate responsible adviser of

the Sovereign, to interpose his official authority, in order that the Lord Chamberlain might be directed to present to Her Majesty the eldest sons of all Baronets, applying for Knighthood, according to the tenor of Letters Patent, Statutes, and other instruments whereby successive monarchs had bound themselves and their successors to the Throne.

An abstract of the proceedings in Mr. Broun's case of application for Knighthood, with the resolutions of the Committee upon the same, was transmitted to Sir Robert Peel, the Prime Minister, who, in reply, stated that he approved of the course pursued by the Lord Chamberlain in the matter, and that he must therefore decline to interpose his official authority for the purpose of inducing that Officer to depart from it.

On this subject the Committee reported as follows:—  
“Considering that a petition from the Order praying for a judicial hearing before the Queen in Council has been refused; that the opinions of counsel have been taken upon the subject, and that they have reported they think there is no tribunal whereby the Lord Chamberlain can be compelled to discharge the duty imposed upon him by the Letters Patent of the 10th and 14th Jac. I.; that the compact between the State and the Baronets of Scotland is that their eldest sons shall be inaugurated Knights (*Equites Aurati*) by the reigning Sovereign whensoever they or any of them shall require that Order; that the Lord Chamberlain, on the formal requisition of Mr. Broun, has declined to present him to the Sovereign for inauguration as a Knight; and finally that the Prime Minister, by approving of the course taken by the Lord Chamberlain in the face of a recorded protest by the Committee, has sanctioned a transaction of the most illegal, arbitrary, and unprecedented nature, your Committee are of opinion that the time has arrived when it devolves upon the Order

either to submit to a course which would countenance the doctrine that the Queen is not bound by the acts of her predecessors—would warrant the supposition that there was no faith or honour in the mind of His Majesty, King Charles I., when he promised, on the word of a Prince for himself and his successors, that this particular grant should be onerous on the Crown—and which would for ever compromise the dearest rights and immunities of the Baronetage, or else to assert and make good this vested and indefeasible prerogative, by such acts and regulations of the body, as shall comport with the dignity of the Order—evince its wonted fealty to the Commonwealth—and uphold those principles of honour, justice, and truth, which are the basis of all law and privilege in the realm."

The Committee resolved that in discharging the duties which lay before them they would proceed with caution but firmness, and would neither compromise the Baronetage by claiming too much, nor by asserting too little; the simple and direct end which they proposed and would strictly prosecute being the revival of the whole chartered rights and immunities of the Order. It may be considered to be an indisputable fact that the Baronets as an hereditary degree of dignity are by the constituent Charters of the Royal Founders placed in the same category with the other degrees of hereditary dignity, *i.e.*, with the *nobiles majores* of the realm, and are as such brought within the influence of the same rules for place, precedence, privilege, and other matters concerning dignity which regulate respectively the family distinctions of those high ranks. Again, the Baronets are the only class of privileged subjects in the monarchy who have equestrian nobility superadded to their hereditary baronial honour under Royal Covenants rendering the same, with its ornaments and pre-eminences, descendible rights in the Order for ever. Hence in the representation placed in the hands of the Prime Minister, the Committee submitted

on behalf of the Order, that no claim had been put forth which was not substantiated by reason, by evidence, and peremptory enactment; neither had any rights, privileges, or distinctions been received or exercised which were unjustified by precedent, analogy, public convenience, or by the design and intention of the Royal Founder of the Baronetage implied or declared. There exists in various quarters an impression that the rights, privileges, and distinctions in question are new or unaccustomed, and it is considered that for their free use and enjoyment the sanction or concurrence of the reigning Sovereign is indispensable. This, however, is not so; indeed it would essentially compromise the interests of the Baronetage, and of every other privileged Order in the monarchy, were a doctrine so novel and unconstitutional to be recognised. The reigning Sovereign is the fountain of honour to such of her subjects as she may be pleased to ennoble. But the Queen is not the source of any privilege vested in the Baronetage by its Constitution—and there is no prerogative in Her Majesty to interfere with the free and full enjoyment by the Baronets of any rights, immunity, or privilege whatsoever incidental to their dignity in virtue of the acts, patents, or engagements of Her predecessors on the Throne.

During the course of these proceedings, and before asserting any rights or privilege appertaining to the Order, the Committee successively exhausted every step which the most devoted loyalty to the Crown or dutiful respect Her Majesty could dictate, they therefore considered that they would betray the dearest interests of the Community, and act unworthily of men whose ancestors laid the foundation of the Monarchy, if they for a moment receded from any of the above conclusions. The object for which the Committee for privileges of the Order of Baronets was founded was, to sum it up in a single sentence—to accomplish the restora-

tion of the Baronetage to the original chartered excellence of its position—and this they felt might be effected independently of all extraneous aid, and notwithstanding any official opposition. To enable them to do so with honour and credit to the Order, they asked for the steadfast continuance of that high-minded co-operation on the part of their brother Baronets which had so far sustained the dignity and integrity of the proceedings, under all the anomalous and discourteous usage which attended their progress—and further they relied upon the support and approbation of all those Ranks and Degrees in the United Kingdom who were favourable to the conservation of a graduated aristocracy, and who would wish to preserve for the nobility higher and lesser of the British Empire, that consideration among the Titled Ranks of Europe, which became the position of a great nation,—the ancestral recollections of past centuries,—and the honour of a Dynasty not second in eminence to any that presides over the destinies of mankind.

The Second Anniversary General Meeting of the Order was held on 4th June, 1842, at the Clarendon Hotel, Bond Street, London, Sir Henry Mervyn Vavasour, Senior Baronet of the United Kingdom, being in the chair. The Report of the Committee, with regard to the above proceedings, having been read, the Meeting deliberated upon the same, after which the following Resolutions were unanimously agreed to:—

“1st. That the Report read be received and entered upon the journals of the Order together with the unanimous and most approving vote of Thanks of this General Meeting to those acting Members of the Committee, who, during the course of the last year, have so faithfully and honourably upheld the interests of the Order and uncompromisingly discharged the duties confided in [*sic*] them by their brother Baronets.



"2nd. That with a view to checking in future the abuses existing in the Baronetage from the irregular assumption of Titles—This General Meeting resolve and declare: That no person henceforth taking up a Baronetcy after a dormancy or succeeding to such dignity by collateral succession, shall be recognised, held, or considered a Member of the Order, or his name be added to the authentic Roll thereof, who shall fail to submit to the Committee for Privileges the evidence by which his right is instructed, or neglect to record the same in the books of the Committee.

"3rd. That the Committee shall prepare and keep a Great Roll of the Order which every Baronet shall be invited to sign in order that there may be formed a correct and authentic Registry of the Members of the Order.

"4th. That the Prime Minister having approved of the course pursued by the Lord Chamberlain in the case of Mr. Broun's application for Knighthood, which course the Committee for Privileges after mature deliberation have found and declared to be in direct contravention of the constitution of the Baronetage, a Statute Law of the Realm of Scotland, the Articles of Union, the obligations of the Coronation Oath, and the unbroken precedents of 230 years, this General Meeting do require of Mr. Broun, in whose person the natalitial rights of the Eldest Sons of the whole of the Baronets in the United Realm have been violated, that he will, in virtue of his being a Knight *de jure* as the eldest son of a member of the Order of ancient creation, vindicate this fundamental and inalienable privilege of the Eldest Sons of Baronets, by henceforth, using, taking, and enjoying the ancient chivalrous dignity of a Knight (*Eques Auratus*) with the immunities and precedencies thereunto belonging; and that the Committee for Privileges do record the same in the journals of the Order, that the precedent may rule in future the cases of all such Eldest Sons of Baronets as may hereafter apply

for Knighthood under the Letters Patent of the 10th and 14th Jac. I., and experience a similar arbitrary and illegal course of procedure on the part of the responsible Officers of the Crown.

"5th. That it be an instruction from this General Meeting to the Committee to direct the especial attention during the course of the year ensuing to the questions connected with the dignity, precedency, and privileges of the wives, daughters, and daughters-in-law of Baronets; to the settlement of the points yet unconcluded as to the Honorary style to be attributed to the Order and to individual members when spoken of, or addressed, in public assemblies; and generally to the prompt and vigorous carrying out of the conclusions arrived at since its institution.

"6th. That the dress uniform shall be scarlet and green; the undress uniform green, and black or white: the details to be finally arranged by the Committee.

"7th. That the Ulster and Nova Scotia Ribands may be worn either round the neck with the Badge suspended, or scarf-wise without the Badge, at the option of the wearer.

"8th. That as the uniform adopted refers to the military functions vested in the Baronetage, viz., their being a body of Knights for the defence of the Royal Standard of the Sovereign, the device on the button shall be the Royal Standard, surrounded with the Collar S.S., surmounted by an Imperial Crown.

"9th. That all Eldest Sons of Baronets, being Knights *de jure* by birth with privilege to become Knights *de facto* on attaining majority, shall have the privilege of wearing the uniform adopted, with the ensigns appertaining to Knighthood, viz., the Collar of S.S., Gold Spurs, Ring, etc.

"10th. That the Younger Sons of all Baronets may wear the undress uniform and button of the Order.

" 11th. That with a view to setting an example to the Order at large, the Members of Committee resident in London shall be expected to have their uniforms and badges made as soon as possible; and that such Baronets and Eldest Sons of Baronets, as may be invited during the course of the present or future seasons to parties given by members of the Order, shall be expected to wear them.

" 12th. That this General Meeting at its rising do stand adjourned, subject to the call of the Committee for Privileges."

The Meeting was then adjourned till Monday, 20th of the same month, on the evening of which day the Anniversary Dinner, in celebration of the Birthday of King James I., the Royal Founder of the Order, took place.

It may be worth while to add that before the adjournment of the above Meeting a resolution was passed requiring the Honorary Secretary (Mr. Richard Broun) to vindicate by an act of his own the alleged inalienable right vested in the heirs apparent of the Order. In response to this resolution, Mr. Broun stated that the Prime Minister had not hesitated to approve of, and make himself a party to, proceedings which ought to subject the advisers of the Crown in this matter to public impeachment, and that he (Mr. Broun) had no possible hesitation in complying with a requisition which called upon him to evince his respect and loyalty to the Crown and Monarchy, by acting in conformity with the will and pleasure of the Sovereign Founder of the Order, recorded under the Great Seal of the Realm and promulgated by a Statute Law of that supreme and pre-eminent tribunal, the Estates of Scotland in Parliament assembled. He had presented his application for Knighthood in 1836 because, having led the Baronets to institute proceedings for the restoration of the Baronetage to the original excellence of its foundation, he felt that he was bound, in honour and duty to the Order, not to shrink from asserting in his

own person such rights and privileges as appertain to the Eldest Sons of Baronets; nor did he regret, under all the discourteous opposition which the Order had experienced, that it should be left to him to shew, in the face of the Government and the country, that the Baronetage still enrolled men who would not suffer the constitution of the Order to be infringed upon, or the gracious intentions of its Royal Founder to be treated with contempt. He declared his intention to henceforth use, take, and enjoy the chivalrous dignity, which he claimed to be vested in him, by blood and by Royal Letters Patent, being fully satisfied that Her Majesty on the Throne had no better pretension to the Regal dignity than he and the Eldest Sons of all Baronets had to the dignity of Knighthood. He claimed that he was a Knight under the Letters Patent which elevated his ancestor Sir Patrick Broun, Baron of Colstoun, to the dignity of the Baronetage, and further he claimed that personal investiture was a non-essential in a case where Knighthood is demanded of the Sovereign as a right, and is not asked or sought for as a favour. Knighthood had devolved upon him under the Grant of the Royal Founder, and he could no more be disseized of this natalitial right by the misprision of the Lord Chamberlain than the Prince of Wales could be disseized of the Duchy of Cornwall because he had not received the accolade. Inauguration was a service to be performed on demand; not a prerogative to be exercised by volition; it was an ostensible recognition of a right, but it did not in any respect confer a franchise.

The Queen would not the less have used and enjoyed the Regal dignity, had the parsimonious, levelling spirit of the age debarred her from the solemnities of a Coronation. Were indeed Knighthood and Inauguration equivalent things, so far as regards the Eldest Sons of Baronets, they could not be Knighted under the present reign, for by the

chivalrous usages of all Christendom a female is incompetent to receive or to bestow Knightly honour. The obligation, however, resting on the Sovereign, as regards the Eldest Sons of Baronets, was simply to give them, as Knights, those outward marks of their estate and dignity which the conventional term "inaugurate" implied—there was no creating of them Knights *de novo*.

He had testified his dutiful respect to the Queen by requiring the Lord Chamberlain, as in duty bound, to present him for inauguration, and that officer having refused to do so, he (Mr. Broun) claimed by his own act and deed to assume Knighthood. He threw the responsibility of so doing upon that officer and the Prime Minister, who had sanctioned that officer's conduct. As the heir of a family who had held free Baronial rank in Scotland from a period antecedent to 1116, who obtained their Baronetage dignities for eminent loyalty to the Crown and services to the Monarchy, he need not say that he made his claim without prejudice to the motto of his race, which ever had been and would be "Floreant Majestas." Her Majesty had no subject more devoted than himself, and he could not better evince it, than by repudiating a course of conduct (even although approved of by the head of the Government) which he considered to be treason against the State. If the Order of Baronets, that high Hereditary Estate, had truckled to the doctrine that "the Queen was not bound by the Chartered engagements of her Predecessors," it would have rendered it infamous with all posterity, and compromised every privilege existing under Letters Patent of the Crown. But, on the contrary, it had acted in a manner which would command the respect and gratitude of the aristocracy of all Christendom.

This vindication by Mr. Richard Broun was not attended with immediate fruit. In 1874, however, the late Lord Beaconsfield advised Her Majesty that the Baronets had

right on their side, and Ludlow Cotter, of Rockforest, eldest son of Sir James Lawrence Cotter, 4th Baronet, was, on attaining twenty-one years of age, presented by his father to Her Majesty, and was thereupon duly Knighted in accordance with the Letters Patent of the Baronetcy and agreeably to precedent. The right was therefore publicly recognised by the highest authority in the realm, and the position taken up by the Order in 1842 amply justified.

The Committee of Baronets, which has just been revived on the model of that of 1842, is both desirable and useful. The hasty manner in which of late years the chivalrous dignity has been bestowed on the first-found plutocratic grocer, or brewer, is a serious wrong to the older Baronets—men of position and weight in the Social scale. Again, the attempts made by divers Statutes to interpose new Judicial officers between the Baronial rank of the Peerage and the Baronets, to the disadvantage of the latter, should be stoutly resisted. The Letters Patent of Baronets limit the persons who shall intervene between these two ranks; but an attack was made on this prerogative by the Statutes 53 Geo. III., c. 24, s. 4, and 5 Vict., c. 5, s. 25, which let in the Vice-Chancellors of the Court of Chancery to rank before Baronets.

These Statutes have, however, been repealed. Another not uninteresting question concerning the precedence of Baronets will doubtless occur some day. By the terms of the Letters Patent constituting the older Baronets of England and Great Britain, it is directed that the following Judges shall take precedence of the Order, viz., the Chief Justice of the King's Bench, the Master of the Rolls, the Chief Justice of the Common Pleas, the Chief Baron of the Exchequer, "and all and singular the Judges and Justices of either Bench and the Barons of the Exchequer, of the Degree of the Coif, for the time being." Of the Degree of the Coif signifies one who has been created a

Serjeant; the Degree of Serjeant, when joined to the Judicial appointment, being deemed to be entitled by virtue of its high honour to rank above the Order of Baronets, but only, be it observed, when those two honourable distinctions are united. The Judge of the Court of Admiralty, for instance, although a judge of a superior court, had not the Coif, and therefore always ranked *after*, and not before, Baronets.

In 1873, on the passing of the Supreme Court of Judicature Act, it was enacted (Sect. 8) that no person appointed a Judge of the High Court of Justice, or of the Court of Appeal, should thenceforth be required to take or to have taken the Degree of Serjeant-at-Law. The result of this new law is well known. No Judge has since it has been passed applied for the Coif, and the ancient Order of Serjeants has practically ceased to exist. For all purposes of common law and equity, for all purposes of procedure and practice, a Judge without the Coif is as good a Judge as one with the Coif. It is for social purpose that a difference exists: and umbrage might properly be taken by a Baronet if not accorded his due precedence before those Judges who are not of the Coif, on State occasions, or in the presence of the Sovereign. The present Lord Chief Justice of England has not the Coif, but independently of that he takes precedence as a Peer, so his case is not in point. But Mr. Justice Hawkins is not a peer, nor has he the Coif, and the same is the case with the other Judges of the Queen's Bench Division, viz., Justices Mathew, Day, Wills, Grantham, and others more recently appointed. Nor would it, we submit, be in the power of Her Majesty to confer the lost pre-eminence on Judges who have failed to attain the Degree of the Coif; for the Letters Patent emphatically declare that, "neither we nor our heirs or successors will hereafter create within our Kingdom of England any other Degree, Order, Name, Title, Style,

Dignity, or State, nor give or grant place, precedence, or pre-eminence, to any person under or below the degree, dignity, or state of a Baron of Parliament, who shall be superior or equal to the dignity of a Baronet, nor shall any person under the degree of a Baron (except those previously excepted by the Letters Patent) by reason of any constitution, dignity, office, or other thing whatsoever, now or hereafter, have, hold, or enjoy place, precedence, or pre-eminence before a Baronet."

The Judicature Acts of 1873 and 1875 have been fertile in creating new Judicial officers; but the fact that the Lords of Appeal in Ordinary are constituted Barons for life, saves the appointment from being *de jure* that which it is *de facto*, viz., a new and dangerous attack on the precedence of the Order; for it is, as above pointed out, prejudicial to the grant of the dignity of a Baronet that new degrees or titles should be interposed between his Order and the Peerage.

VINDEX.

## VII.—CURRENT NOTES ON INTERNATIONAL LAW.

### International Arbitration.

An extremely able and interesting article upon "Treaties of General and Permanent Arbitration" appears in the *Revue de Droit International*, No. 4, 1897. It is from the pen of M. Férand-Giraud, a distinguished French jurist and Honorary President of the Cour de Cassation of France. It is a very complete sketch of the history of the progress of the arbitration principle. The writer considers the views of nearly all the leading jurists in modern times upon the question of the limitations within which arbitration is practicable. In view of the negotiations understood to be



still pending between our own Government and the United States for a general Treaty of Arbitration, the question has more than an academic interest.

The chief difficulty which the two Governments found in formulating the rejected Treaty arose, it will be remembered, in connection with the question as to what matters should be excluded from the scope of the Treaty. The reluctance of any State to blindly submit to the award of a third person all disputes which may arise with another State is only natural. Still more is this to be expected when the State in question is a powerful one and its self confidence is backed by material prosperity and great naval or military strength. There is an inevitable repugnance to submitting to the arbitration, even of the most impartial tribunal, matters involving the dignity and prestige of a nation, quarrels which a nation, rightly or wrongly, feels have been forced upon it by the wanton aggression of another State, or questions involving the nationality of its citizens, or its own integrity and independence.

It is difficult to precisely define what subjects must reasonably be regarded as outside the scope of arbitration, but it is easy to indicate those which can obviously be brought within its sphere. Disputes turning on mere questions of fact, questions of compensation or estimation of damages; those of a purely juridical nature involving the application of well-established principles of International Law; and finally questions of construction and application of treaties and other international compacts—all these seem to be capable of general submission to arbitration. As regards many other cases, however, of a more strictly political nature, that may arise, there is very great difficulty in attempting to make a similar provision for them. The overwhelming sanctioning force of a Sovereign Power which can enforce the decisions of, and, indeed, *compel* submission of disputes to, its own tribunals,

can alone reconcile individuals or nations to entirely surrender their wills and their claims to a third party's judgment. There seems, in extreme cases, to be no third alternative to diplomacy or the stern arbitrament of war. Having regard to these considerations, it is the more remarkable that M. Férand-Giraud has been able to collect a full score of instances of existing international treaties for general arbitration. The parties to most of these are, it is true, the smaller European States or else the various Republics of America. The only Great Power, other than the United States of America, which figures in the list, is France, which by a treaty of 1888 with Ecuador agreed that "in case of any dispute arising, of a kind to endanger "the good relations existing between the two countries, "and not being capable of an amicable settlement, the high "contracting parties will submit it to the arbitration of a "friendly power to be mutually agreed upon."

The most important treaty is, of course, the Pan-American Treaty of 1890, by which the United States and all Republics of South and Central America agreed to submit to arbitration "all the differences, conflicts, or "disputes which should arise between any two or more of "them." By a curious irony of fate, this splendid declaration, signed on behalf of the various parties concerned with pens of gold, was followed almost immediately by a sanguinary struggle between Salvador and Guatemala, and an even more terrible civil war in Chili.

### **Reprisals.**

The threatened bombardment in December last of the capital of Hayti by German warships speedily effected its object. It was alleged that a German subject, Herr Lüders, had been unfairly and arbitrarily imprisoned by the Haytian authorities. In consequence of peremptory diplomatic

communications he was released, but early in December the German Government delivered an ultimatum threatening bombardment of the town unless the Haytian Government within eight hours complied with the following claims :—

- (1.) A salute to the German fleet by the Haytian flagship.
- (2.) A formal reception of the German Minister by the President of the Republic.
- (3.) A formal apology for the proceedings against Herr Lüders ; and
- (4.) Payment of a sum by way of compensation.\*

The German vessels cleared for action, but all the demands were complied with with a promptitude even excelling that displayed in the Anglo-Chinese Incident of 1895. (See *L. M. and R.*, XXI., p. 78.) The case of Herr Lüders resembles in some respects that of the "Costa Rica Packet" (See *L. M. and R.*, vol. XXII., p. 188 *et seq.*), which was recently submitted to arbitration by the British Government. The semi-civilisation of Hayti, however, was, perhaps, sufficient justification in the present case for prompter and more forcible measures.

As regards the other experiment in Intervention in which Germany has recently indulged, the utmost that can be said of it is in the words of "Historicus," that "its justification was its success." Avowedly, the forcible occupation by German marines of Kiao-Chau was to take effect "until the case of the murder of German missionaries in Shantung is settled."†

The extraordinary claims made by way of compensation, involved, amongst other things, the erection of a cathedral at the expense of the Chinese Government. It now appears that Germany further demanded and has obtained a "lease" of the occupied territory, practically amounting to a cession of Sovereign rights. This novel form of

\* *Times*, December 7th, 8th, and 9th.

† See *Times*, November 16th, 17th, 19th, and 20th, and the declaration by the German Commander-in-Chief, *Times*, 6th January.

territorial expansion will necessitate a new chapter in future editions of International Law Treatises. It will be interesting to note its development.

#### **The Behring Sea Award.**

The delay of the U.S. Government in satisfying the obligations imposed upon it by the Paris arbitrators, has, it is to be hoped, almost reached a final stage. In December last, the Commission appointed for the purpose made its Report, and unanimously awarded a sum of \$464,000 to Canadian sealers for losses sustained by the various illegal seizures of their vessels between 1886 and 1897. This sum is exclusive of two small reserved claims, conditionally assessed at \$6,000.\* No actual payment appears to have yet been made.

#### **Contraband.**

The case of *Ruys v. London Assurance Corporation*, 1897, 2 Q.B. 135, arose out of the capture by an Italian cruiser of a ship carrying a cargo of contraband arms and ammunition intended for the King of Abyssinia during the recent war. The shipowners gave to the underwriters notice of abandonment for constructive total loss. The ship was condemned by an Italian Prize Court, but was ultimately, on the termination of hostilities, restored to the owners. Collins, J., held that such restoration did not disentitle the owners to recover as for a total loss.

#### **Divorce Jurisdiction.**

The question arising in *Sinclair's Divorce Bill*, 1897, Ap. Cas., p. 473, involved the principle laid down by the Privy Council in *Le Mesurier v. Le Mesurier*, 1895, Ap. Cas. 517, and is interesting as being the first formal recognition by the House of Lords of the validity of that decision.

In the recent case, the respondent and co-respondent did not appear when the matter came before the English Court, so that the point in *Zyclinski v. Zyclinski*, 2 Sw. and Tr. 420 (and see Dicey: *Conflict of Laws*, p. 276), did not arise.

### **The Foreign Jurisdiction Act.**

The right of a British subject to be tried for felony by a jury of twelve men was held by the Judicial Committee in the case of *ex parte Carew*, 1897, Ap. Cas. 719, not to extend to cases coming within the Foreign Jurisdiction Act. The prisoner had been tried for murder by H.M. Consular Court in Japan and convicted by a jury of five persons. The Court was constituted by Orders in Council made in pursuance of the first Foreign Jurisdiction Act, 6 and 7 Vict., c. 94 (now repealed by, but substantially re-enacted in, the Act of 1890). The Privy Council held that the Court was lawfully constituted and had all necessary jurisdiction to try the case in question.

### **Jurisdiction over Foreign Sovereigns.**

Some very curious and interesting questions arose in two distinct interlocutory applications made in the case of *The South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord*, 1897, 2 Ch. 487, and *Times L.R.*, Vol. XIV., p. 65. The action was by the Government of the Transvaal, and its object was to protect a fund in which the plaintiffs claimed an interest. This fund was standing in the names of two trustees, one nominated by the plaintiffs and the other by the defendants. The plaintiffs' nominee died, and the action was brought for the appointment of a new trustee in his place, the fund in the meantime being paid into Court.

The defendants put in a defence and counterclaim, asking, by the latter, for relief under three heads: (1) Pay-

ment by the plaintiffs of three sums, alleged to be due in respect of the concession granted by the plaintiffs to the defendants for the construction of a branch railway in the Transvaal; (2) an injunction to restrain the plaintiffs from taking proceedings in their own Courts to avoid the concession and to expropriate the defendants' property, or in the alternative for damages; and (3) damages for libel.

The Court of Appeal granted an application by the plaintiffs to strike out the third head of the counterclaim. The ground of the decision was that even if the plaintiffs had been ordinary individuals and not a foreign Government, the counterclaim would have been struck out under Order XIX., r. 27, and probably under Order XXI., r. 15, and the plaintiffs would have been left to their remedy by cross action.

The defendants ineffectually raised the further plea that as such a cross action admittedly could not be brought, and as the Republic had submitted to the jurisdiction, the Court should, as a matter of justice, give the defendants the right to sue by counterclaim.

On a subsequent application to strike out the other two heads of the counterclaim, *Times L.R.*, XIV., p. 65, the whole question was raised of the right to counterclaim against a Foreign Sovereign suing here as plaintiff. North, J., ordered both heads to be struck out, following the principle laid down by James, L.J., in *Strousberg v. Costa Rica*, 29 W.R. 125, that "where a Foreign Sovereign comes into the Municipal Courts for the purpose of obtaining a remedy, then by way of defence to that proceeding (by way of counterclaim if necessary), to the extent of defeating that claim, the person sued here may file a cross claim . . . for the purpose of enabling complete justice to be done between them."

Dicey (*Conflict of Laws*, p. 213) states the rule somewhat similarly, in these words: "If the counterclaim is really a

"defence to the action, *i.e.*, is a set-off or something in the nature of a set-off, the Court has a right to entertain it. If the counterclaim is really a cross action, the Court has (semble) no jurisdiction to entertain it."

The only point of doubt in the present case is as regards the first head of the counterclaim. So far as the facts are clearly reported there would appear to have been some ground for arguing that it fell within the scope of the principle laid down in the *Costa Rica* case. The funds in Court consisted of monies to be drawn upon for the purpose of carrying into effect the concession, and the counterclaim appears to have been for "sums due in respect of the concession." North, J., however, on the evidence, held that "they were not sums in respect of which the defendants had any claim against the fund."

It will be recollected that in the recent case of *The Imperial Japanese Government v. P. & O. Co.*, 1895, Ap. Cas. 644, a somewhat similar point arose, but was disposed of on other grounds.

#### **Substituted Service on Defendants out of the Jurisdiction.**

In *Jay v. Budd*, 77 L.T.R. 335, the Court of Appeal (Rigby, L.J., *diss.*) distinguished *Wilding v. Bean*, 1891, 1 Q.B. 100, and allowed substituted service upon a defendant who was within the jurisdiction at the date of the issue of the writ, but had left the country (though not for the purpose of evading service) before the writ could be actually served on him. It does not appear from the reports whether the case is one which would in any event have justified service *out of the jurisdiction*. Dicey (*Conflict of Laws*, p. 237, n. 5) seems to have taken the view expressed by Rigby, L.J., in his dissenting judgment.

#### **English or Foreign Assets.**

In *Re Smyth; Leach v. Leach*, 77 L.T.R. 514, Romer, J., following *Sudeley v. Att.-Gen.*, 1897, Ap. Cas. 11, held that

a share belonging to a domiciled Englishman in the proceeds of sale of land in Jamaica devised by a domiciled English testator to trustees for sale, was "an English equitable *chose in action* recoverable in England, and an "English and not a foreign asset, and as such subject to "probate duty here." We commented upon a similar point in Vol. XXII., p. 116-117.

### Lunatics' Property Abroad.

In an application in Lunacy which recently came before the Lords Justices in the matter of *In re Hopper*, 66 L.J. Ch. 569, the lunatic was a widow who was, with her four sons, entitled to a business carried on in Russia, the works and machinery being her absolute property. Her interest was of very considerable value, being estimated at over £100,000. The present application was for the appointment of her eldest son as committee of her estate and as receiver and manager of the Russian business, and for the appointment of her daughter, who resided in England, as committee of her person.

The application was supported by all the persons who were possibly interested in her estate, either as next-of-kin or under a will made by her. The Master in Lunacy was of opinion that the fact of the son being resident out of the jurisdiction was a serious objection to his appointment as committee of the estate, and proposed instead, the appointment of the Official Solicitor. It appeared, however, that by Russian Law it was absolutely necessary that any one dealing with the property should be the nearest relative. Under the circumstances, the Lords Justices appointed the eldest son and the daughter joint committees of the estate, leaving it open to the latter to give the former a power of attorney to act for both. They



also authorised the committees to sell or concur in selling the property of the lunatic in Russia.

### Probate Duty on Foreign Wills.

The Court of Appeal, in December last, overruled the decision of the Divisional Court in the case of *The Attorney-General v. New York Breweries Co., Limited*, 1897, 1 Q.B. 738. The case on appeal is as yet only reported in the *Times* L.R., Vol. XIV., p. 119; and W.R., 1898, p. 175. We have already referred to the facts of the case in discussing the decision in the lower Court. (See *L.M. and R.*, Vol. XXIII., p. 50.)

It appears that the Crown had abandoned the claims for penalties under 55 Geo. III., c. 184, sect. 37, which had been originally made against the Defendant Company. The questions involved in the appeal were really four in number, *i.e.*: (1) Were the Shares and Debentures in the Defendant Company English assets? (2) Were the Company Executors *de son tort* in respect of the acts complained of? (3) If so, whether an information would lie to compel them to pay probate duty in respect of the assets which they had dealt with? And (4) Whether the process of transferring to the American Executors the Share and Debenture in the Defendant Company, which had been registered in the deceased's name, involved a "taking possession" of those assets within the meaning of the Statute?

The Court (Smith, Rigby and Collins, L.JJ.), in elaborate written judgments, unanimously answered each of these questions in the affirmative. Rigby, L.J., clearly laid down that, by English Law, duty was payable in respect of all the assets of a deceased person, whether domiciled or resident within this country or not, which were "locally situate in England." "Local assets"

included the shares and debentures standing in the name of the Defendant Company, which was an ordinary limited Company registered in England and having its registered office in London, although part of the assets of the Company consisted of brewery businesses in New York, (See Hanson on "Death Duties," 3rd ed., p. 160, and Dicey, p. 323.)

It was pointed out by Smith, L.J., that foreign executors obtaining transfers of shares in an English Company, or receiving dividends, would clearly be executors *de son tort* unless they obtained probate or grant of administration in England. (Compare the principles in Dicey's *Conflict of Laws*, Rules 115, 119 and 121, and *Fernandes Executors*, L.R. 5 Ch. 314.) The fact that the Defendant Company acted under the directions of another executor *de son tort* did not in the least justify them or prevent them from themselves being liable as executors *de son tort*. The Company were, therefore, liable to pay duty in respect of the assets administered.

Although the claim of penalties had been waived, all the Lords Justices clearly intimated that they regarded the acts of the Company as coming within the scope of the Statute under which they had originally been claimed, Collins, L.J., saying that there was a constructive "taking possession" involved in the alteration of the register and the payment of interest and dividends.

#### Other Points.

Recent cases of less general interest include the following :—*Ex parte Clarke*, 77 L.T.R. 417, as to a receiving order against a debtor domiciled and resident abroad; and *Watson v. Sandie and Hull*, 77 L.T.R. 528, as to income-tax on a foreigner's business "carried on in the "United Kingdom."

JOHN M. GOVER.

# VIII.—NOTES ON RECENT CASES (ENGLISH).

## Lopping Trees. Misfeasance or Non-feasance?

**A** TRAVELLER on a tramcar lost his eye through receiving a blow from a branch of a tree in Victoria Park, London, and claimed damages (*Tregellas v. The London County Council*) for the injury so suffered. For the County Council, it was argued that no action would lie, inasmuch as Victoria Park was a Royal Park, and the trees were Crown Property. Even though it might be the duty of the County Council to lop them, they could not be made responsible for non-feasance. Reference was made to a multitude of cases. On the other hand, plaintiff's counsel argued that the negligence here was misfeasance. It was held by the Lord Chief Justice that the plaintiff could not recover. It was the duty of the London County Council to do all that was reasonably necessary for the proper regulation of the parks, and to insure the safety of the people using them. They were bound to see that the trees should not be allowed to extend beyond the confines of the park, so as to be a danger or nuisance to persons lawfully using the highways, and it was the duty of the park-keepers or some such person to report such an evil if it existed, so that the trees might be lopped. Trees had been allowed to extend their branches so as to be a danger and a nuisance, and the plaintiff had suffered injury. The trees, however, were not planted by the defendants, nor during the period in which they were charged with the control and management of the park. They neglected their duty of lopping the branches, but that was an act of non-feasance only. There was no statute which put an exceptional liability on the London County Council beyond that which the general law imposed. If the servants of the London County Council had in pursuance of their duty lopped the trees so as to prevent them

from being a nuisance, and in the course of doing so had let a branch fall on a passer-by, and so caused an injury, then that would have been a misfeasance, and the London County Council would have been liable. As the defendants were not liable for an act of non-feasance, there was no case against them. There is often an incorrect use of the word misfeasance and malfeasance—for misfeasance is the wrongful and injurious exercise of lawful authority, or the doing of a lawful act in a wrongful manner, whereas malfeasance is specifically the doing of an act which is positively unlawful or wrongful, as shewn in Grant's "History of the United States," where it is stated that an account of a certain statesman's malfeasance reached England. Non-feasance is the omission of some act which ought to have been done by the party.

#### **The Right to Heriots. A Practical Point.**

Is it correct to apply for a rule *nisi* for a mandamus to the lord and the steward of a manor to compel them to admit the applicants to a holding in a manor formerly held by a person since deceased, the applicants being the trustees of the will of the deceased? Mr. Justice Wright in the case of *Ex parte Page* answers this question in the negative. He said it was not a proper case for a prerogative writ of mandamus. The prerogative writ could only be granted in cases of public concern. It appeared in this case of *Re Page* that the deceased had carried on the business of a farmer in partnership with his brother, and had a partnership interest in the stock and chattels of the business. One of the incidents of the copyhold property was a heriot. A point was as to whether the lord of the manor was entitled to refuse to admit the applicants to a portion of the property except on the payment of twenty guineas in lieu of a heriot. A formal application was made by the trustees demanding admittance, with an offer to hand over any article of

the testator's wearing apparel which the lord of the manor might select. This was not assented to. An important question of law was, whether in the absence of custom a lord of the manor could compel an applicant to pay money instead of a heriot? Here the only heriot that could be given was clothing, inasmuch as the deceased was not the absolute owner of the stock or the business. The deceased had no jewels. Unfortunately this point as to whether the lord's claim to a heriot could be satisfied with a gift of clothing in lieu of the best beast or money was not decided, the case being settled on the foregoing point of practice. The general rule is that on the death of a copyholder the lord can claim the best beast or best chattel whether consisting of a jewel or piece of plate, or anything else, or can seek some pecuniary gift in place of them. Heriots, as is well known, were formerly a tribute to the lord of the manor, of the horse or habiliments of the deceased tenants, "in order that the Militæ Apparatus might continue to be used for the purpose of national defence by each succeeding tenant." When military tenures declined, the heriot became commuted for the tenant's best beast or best chattel, or, in default of them, to pay a money fine. Heriots from freeholders are now rare, but heriots from copyholders are not so. Novelists like to write about this kind of feudal service, as shown by the following dialogue in "Edwin Brothertoft," by T. Winthrop:—" 'It was in my lease,' said Sam, 'to pay a mare colt every year over and above my rent, besides a six-year old mare for a harriet, whenever the new heir came in.' 'Heriot, I suppose you mean, Sam.' "

#### **Authorities to Sign Contracts.**

The fact that an owner of property places his house upon the books of a firm of public-house brokers does not give them any authority to sign a contract of sale on behalf of the owner. The owner of such property might give

particulars of the house to a dozen different brokers, and they could not all be authorized to enter into and sign contracts of sale. In this case of *Wilkins v. Bennet*, the plaintiff had sought to recover £500 damages for breach of a contract to sell a public-house, but for the defence it was contended that the public-house brokers, who signed the contract of sale on behalf of the defendant (the vendor), were not authorised so to do, and the Queen's Bench Division supported this view. The facts shewed that the defendant, being the proprietor of a tavern and desirous of selling it, placed it upon the books of a firm of public-house brokers, and they were told at the same time who the defendant's broker was, as he had one of his own, but the defendant agreed to pay them £100 in the event of their introducing a purchaser. The plaintiff had, it appeared, been taken down to view the house by the public-house brokers with a view of his purchasing it, and the defendant signed a document giving the plaintiff the option of purchasing it for £12,500 within 10 days.\* The plaintiff subsequently attended at the office of the public-house brokers and signed a contract for the purchase of the house for the sum named and paid a deposit. The contract was signed by the public-house brokers on defendant's behalf, but they did not immediately inform the defendant of that fact. Defendant argued that some considerable time elapsed before he heard of the signing of the contract and the payment of the deposit, and in the meantime he had sold the house elsewhere at a higher price. On the deposit being returned to the plaintiff, he sought to recover damages for non-completion. Mr. Justice Bigham considered, however, that the fact that the defendant had placed his house upon the books of this firm of public-house brokers did not give them any authority to sign a contract of sale on behalf of the defendant. The fact of offering an agent a sum of money on introducing a purchaser did not give them an authority to sign anything.

The case went, therefore, in favour of the defendant. It was pointed out that no doubt the reason why the public-house brokers failed to inform the defendant of the signing of the contract was that they themselves doubted whether they had authority from the defendant to act on his behalf. The defendant's story, that he had not heard of the contract until long after the plaintiff's option had expired, was therefore accepted, and also that he (the defendant) had in the meantime sold his public-house to someone else.

#### **Repairs to Tied Houses and Assessments under Schedule A.**

Is schedule A the proper schedule under which to assess income tax in respect of tied houses owned by a brewery company? This was the point in the case of *Brickwood and Co. v. Reynolds*. There the appellants contended that the assessment should be under schedule D, when they could deduct the whole cost of repairs, whereas, under schedule A, only one-sixth of the gross income could be so deducted. Both the Divisional Court and the Court of Appeal held that the assessment was rightly made under schedule A, and the brewers could not make the deduction claimed. The brewers had an assessment made against them of £20,900 under schedule D in respect of profits of their trade. They claimed to have this assessment reduced by an amount expended by them in repair of the licensed houses owned by them, and let to tenants, after deducting one-sixth of the annual value of such houses under schedule A. The brewers, it appeared, had, in order to increase their business, bought the licensed houses from time to time and had let them to tenants on the condition that the tenants bought all their beer from the brewers. The brewers, therefore, earned their profits in some measure through selling their beer to the tenant of these tied houses, and the profits were of course increased in that way. All these profits were included in the assessment. It was, however, on the question of repairs on which the

disputants could not agree. All repairs to the tied houses were done by the brewers. The houses were occupied by their tenants in part for their trade and in part for their residence. The repairs were done to both parts of the houses. The contention of the brewers was that the owning and letting of these houses was a part of their business by which their profits were partly earned. The repairs, too, were a necessary outlay without which the profits would not be earned, and this outlay was a proper deduction to be made in estimating the balance of profits. The Inland Revenue Commissioners being upheld by the Divisional Court, and the latter by the Court of Appeal, it must be taken that the expense of the repairing tied houses cannot be deducted.

#### **Misprints in Legal Books.**

A curious misprint in legal text-books has been brought to light in a case heard by his Honour Judge Selfe at Deal County Court. A resident of Sutton lost a number of fowls from his yard, and, suspecting the thief to be a fox, set up a spring gun, which shot a dog belonging to another resident of the same parish. In resisting a claim for damages, it was contended for the defendants that the act of setting up a gun was perfectly legal, as, according to "Addison on Torts," a "gun or trap" could be set. On the other side, counsel quoted "Chitty's Statute Law," which gave the word as "gin or trap." His Honour, having consulted a third authority, found the word to be "gin" and not "gun," and, in giving judgment, said the case had been the means of discovering a very serious misprint, which, if not brought to light, might have led him to give a different decision to what he was about to pronounce; the setting up of a spring gun was an illegal act, and, defendants being liable for the consequences, he awarded the plaintiff £5 and costs.

T. F. UTTLEY.



## Reviews.

A NEW SERIES OF CRITICAL REVIEWS CONCERNING NEW LAW BOOKS OR BOOKS CONNECTED WITH THE LAW, AND NEW EDITIONS OF OLD BOOKS.

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OF the making of law books there is no end: and the supply of them seems to pour forth in a great stream which somewhat overflows the banks of the demand. Let us examine the reason of this.

Men who must needs be otherwise idle, because no grist is coming to the mill, write law books *pour passer le temps* and to provide themselves with necessary employment. Such writing is not undertaken for its own sake. It is the oakum-picking of our self-chosen prison—a mere test of industry. Not that such books are not often valuable: for men who *make* work for themselves often succeed better in it than in the work which others employ them to do.

Many again write books to teach themselves. "You," said the late Baron Martin to an unemployed barrister who was his friend, "had better write a book upon discovery." "But I know nothing about discovery," was the answer. "No," said the Baron, "but you will by the time you have written the book."

Others there are who have some little practice, perhaps in a particular line, but who are in sore need of more. They have shewn themselves able lawyers to some small section of solicitors or of the public: but they wish to shew the world at large that they are able lawyers. They therefore write a book to prove it. There are men eminent in the profession, who trace the source of their success to such a book.

Some are already eminent, but spare their few leisure hours to the work of giving their learning to the world; for the men who are busiest in one way are usually those who make themselves busy in every sphere which their powers enable them to dominate.

Others are legal authors by profession, and make it their whole livelihood: others watch the market and cut in from

time to time with a hastily prepared pamphlet, at a time when there seems likely to be a sale.

The result is of course work, good, bad, and indifferent. It is the purpose of the present series of reviews critically to examine this work, good, bad, and indifferent : and thus to assist our readers to distinguish grain from chaff.

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*An Outline of French Law as Affecting British Subjects.* By J. T. B. SEWELL, M.A., LL.D., Solicitor of the Supreme Court. Stevens and Sons, Limited. Pp. 232. Price 10s. 6d.

It is not by any means always the largest works which are the most valuable to the law library : and the work before us, though a small volume and of unpretentious appearance, will, in our opinion, be one of the most useful new books which we have received for some time. Of course the reader must not expect that he will *know* the law of France upon the subjects dealt with merely by reading its pages. For the law of France in spite of the Code is, like the law of England, a science, which must be studied laboriously and with great efforts of careful reasoning, before it will be possible to understand it, still more before it will be possible to apply it to the case in hand : and we should certainly advise that no litigation of any importance, involving French law, should be undertaken, unless the opinion of an expert in that law be first obtained ; and further that no large contract, which seems likely to raise questions upon that law, be made, except upon the same conditions. But English lawyers—whether solicitors or barristers—advising British subjects are constantly obliged to ask themselves as to the sort of way in which the law of this or that foreign country is likely to regard a particular situation of affairs in the event of circumstances arising which should constitute such foreign country the “*forum decidendi*.” If, when the law of France is concerned, they desire to form some sort of view which *prima facie* should be correct of what a French tribunal would decide, let them in the first instance study Mr. Sewell's book. Again, there are many persons whose business affairs or private concerns are habitually concerned with France, and we should strongly recommend all commercial men who are often engaged in contracts with Frenchmen or contracts which are to be performed in France, patentees whose inventions are tempting to French manufacturers or tradesmen, authors and artists whose works are

likely to create a demand in France, landowners who have property situate in France, husbands who have married French women, and British subjects who have any expectations from French benefactors, one and all to keep this book about them, and to consult it when occasion shall arise. We can promise them all that they will find it useful. The book should be obtained by our law-libraries: and it should be placed in the shelves which contain French law—to which it will form a convenient guide in all matters in which British subjects are likely to be interested. Mr. Sewell has broken some new ground: and his work is of much greater importance than many of the books which we have received and which are merely compilations from larger works or pilferings from other men's brains. In these days of international exhibitions, and travellers working up English businesses in all countries of the world, we should like to see a similar handbook to that portion of the law of other foreign countries with which British subjects are from time to time concerned.

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*The Practical Statutes of the Session 1897 (60 & 61 Vict.), with Introductions, Notes, Tables of Statutes Repealed and Subjects Altered, Lists of Local and Personal and Private Acts and a Copious Index.* Edited by JAMES SUTHERLAND COTTON, Barrister-at-Law. Horace Cox. Pp. 186. 1897. Price 10s.

This is the new volume of Paterson's Practical Statutes: and a perusal of this volume year by year is much to be recommended to those who would keep their tackle in order and be ready to face the work-a-day fighting of legal questions. Those who are interested in Parish Councils, will learn of some small but not unimportant amendments which have been made to the Act of 1894: those who would be abreast of the times in Company Law, will see what has been done to alter that law by the Preferential Payments in Bankruptcy Act, 1897: and the important statutes relating to Voluntary Schools and Workmen's Compensation will also, of course, be found in this little volume. There are a number of less important matters, which have also been made the matter of legislation during the year, such as the relaxation of the rule in cases of treason or felony which prevented the separation of the jury in such cases under any circumstances whatever. It is in matters like these that the

practising barrister especially requires to rub up his knowledge at the beginning of every year, so as to be *au fait* with the newest law upon the subject if the question crops up in any Court. We do, therefore, recommend him to read through these little volumes at the beginning of each new year; for they will give him just what he wants and nothing more—the “practical” statutes without the unimportant enactments with which he is not likely to be often concerned, and sufficient explanation to enable him to grasp to what the change in the law amounts without the burden of any unnecessary disquisition.

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*Lectures on the Principles of Local Government, delivered at the London School of Economics.* By GEORGE LAURENCE GOMME, F.S.A., Statistical Officer of the London County Council, Author of “Municipal Offices,” “Literature of Local Institutions,” “The Village Community,” etc. Archibald, Constable and Company. Pp. 267. 1897. Price 12s.

This work belongs to the region not of law, but of jurisprudence; and we suspect that it will appeal to a very limited class of readers. It appears, upon the face of the title page, that it is the work of a “statistical officer”; and its contents are just what we should look for from a writer whose occupation and training are of that nature. The best part of the book is, in our opinion, that which is contained in the “Notes and Illustrations” at the end, where Mr. Gomme is in his element; and most decidedly the work included in these “Notes and Illustrations” ought to be very useful to Members of Parliament and others, who can find the time to take up the subject, study it in a thorough manner, and examine the results obtained. Statistics are the least tempting form of reading: but it is the duty of those who are intentionally responsible, however indirectly, for changes in the law in such an important matter as local government to investigate statistics and thus to know something of causes by observing effects and analysing abstract generalisations into their concrete instances. Those whose duty it is to enquire into these things ought to read these “Notes and Illustrations,” which disclose a vast amount of painstaking research into a subject which is not inviting in itself. But the actual lectures will certainly not be widely read. They are dull, though they may be instructive. It is the Macaulays and Froudes of history who are widely read—though there may be,

and indeed certainly are, more accurate and laborious works than theirs. However important the subject, it must be discussed in a readable book—not in a depressing disquisition like that before us, which is merely a collection of statistics in the form of grammatical sentences. For such history as is contained in the book is not original; but is copied from the works of accepted authorities, such as the Bishop of Oxford and Mr. Green. Mr. Gomme is probably an excellent “statistical officer”; and in all likelihood it is this very fact which makes him such an unreadable author. At the very outset of his work he makes the astounding statement that “at present principles of local government are not in this country considered at all.” This, to men who have known anything of public life in recent years, sounds at first absurdly untrue. But if the reader perseveres, he will soon discover what the author’s meaning is. Everything depends upon the point of view. It is true that “at present principles of local government are not (very generally) in this country considered at all” *from a statistical point of view*. We do not think, however, that a large public will be induced to begin that consideration now, under the auspices of Mr. Gomme’s book. But if any man will read it sentence by sentence and think out what each proposition means as he goes along, he will undoubtedly be the wiser for his labour, and will have the benefit of a considerable amount of carefully evolved thoughts which very few persons in England would have taken the trouble to evolve at all.

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*The Encyclopædia of the Laws of England*; being a new abridgment by the most eminent legal authorities under the general editorship of A. WOOD RENTON, Esq., M.A., LL.B., of Gray’s Inn, and of the Oxford Circuit, Barrister-at-Law. Vol. IV. “County District” to “Employers and Workmen.” Sweet and Maxwell, Limited. Pp. 488. 1897. Price 20s. net, cloth: 23s. 6d. net, half calf.

We fear that by the time this work is finished it will be too long or too short. Too long for many men to add it to their libraries merely as being one additional guide-post to the law of the land. Too short to form a library in itself and so dispense with the costly array of text-books, which is almost an essential possession of the busy practitioner. The “most eminent legal authorities”—and there are the names of some few men at least

among the list of authors who fully deserve this description—have done their best with the space at their command. But what does it amount to? For instance, will Mr. G. H. B. Kenrick's five articles on "Election Agent," "Election Commissioners," "Election Expenses," "Election Petition," and "Elections" enable us to dispense with "Rogers on Elections," the established work upon the subject? Obviously no. We require the text of the important Acts of Parliament upon the subject before we can even approach the difficult questions that must arise. An Election Agent should have the Corrupt and Illegal Practices Act, 1883, in his pocket or within reach continually. Election Commissioners similarly require constant reference to the Election Commissioners Act, 1852. And all who are concerned with these important matters will also require the texts of the different Acts affecting them and full notes of the cases decided thereunder. For what class of readers, then, are Mr. Kenrick's articles and epitomes of statutes intended? The book is far too large for the use of a law student, and far too cumbersome as a mere work of reference. We should find what we wanted far more quickly in some other way. What Mr. Kenrick has written seems to be entirely correct. He has doubtless done all that he was asked to do, well and efficiently. But we fear that nobody is likely to require the result. Dr. Blake Odgers, Q.C., certainly need not for one moment apprehend that by contributing the article which appears under the head of "Defamation" he has done anything likely to injure the sale of his classic work upon "Libel and Slander"; nor, in short, do we think that the possession of any of these articles will save a practising barrister the purchase of a single other text-book. So much for the substantial and important articles. It is true that we have read some of them with much interest, notably those of Mr. F. W. Maitland on "Court Baron and Court Leet," of Mr. D. M. Kerly on "Custom," of Mr. T. Barclay on "Domicile," and of Mr. W. F. Craies on "Embezzlement." But we must confess that—except in our present capacity of reviewer—we never should have dreamed of turning through a large encyclopædia like this to search for such articles, which might have been far more conveniently published in several other ways. Besides what we have called the substantial and important articles, there are a certain number of definitions and short explanations of legal names and phrases, some of which will be useful to

those who may hereafter possess the encyclopædia, though they will be found given at least as fully in Law Lexicons which are tiny by the side of this. The identity, by the way, of the cynical author, who informs us that "de jure" is the opposite of "de facto," is not disclosed. We have found this volume accurate, so far as we have been able to examine it; nay, more, in some of the articles we have found considerable learning (as would be expected from the names of the authors) ingeniously pressed into the small space at their disposal: some of the articles again shew much labour in the direction of historical research, an instance of which is that of Mr. Craies (well known as an industrious legal author) on "Duels"; and the whole work is completely up to date, as will be found exemplified on reference to the article on the "Summons for Directions" by Mr. F. A. Stringer.

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*A Treatise on Joint Rights and Liabilities, including those which are Joint and Several.* By WALTER HUSSEY GRIFFITH, of the Inner Temple, Barrister-at-Law. Butterworth and Co. 1897. Price 5s.

This little monologue consists only of 65 small pages, and they are worth reading. There is no subject upon which a young practitioner is more apt to get into difficulties, perhaps in his first county court case, than that which is here discussed. The rules of common law are well stated by Mr. Griffith, and Chancery Division cases which are hard to understand without assistance, such as *Richardson v. Horton*, 6 Beav. 185, are also luminously explained by him. We wonder how most of our readers would answer the common-law conundrum stated in Chapter I.: "If A. covenants with B. and C. and has a separate covenant with each of them, B. and C. being *tenants in common* of the demised premises, that he will keep the demised premises in good and substantial repair, must B. and C. both sue for a breach or may one of them recover in proportion to his interest?" Reviewers of novels often take pains to conceal the nature of the denouement, in order not to spoil the reader's interest in the story and so injure the author. For similar reasons we decline to tell our readers how Mr. Griffith deals with this question; but refer them instead to page 16 of the above-named book.

*Then and Now.* By JOHN GEORGE WITT, Q.C., Benchet of Lincoln's Inn. Author of "The Mutual Influence of the Christian Doctrine and the School of Alexandria." Richard Bentley and Son. 1897.

This is a book "connected with the law" in one sense only. It is a book by Mr. Witt, Q.C., whose connection with the law is very well known indeed. The author's motto "the old order changeth not" appears upon the title page, and at once puts the author and the late Poet Laureate at issue—verbally at least. It is true, certainly that Mr. Witt agrees with Lord Tennyson that "God fulfils himself in many ways," but his antiquarian researches into ancient religions and nature-worship and the colour which they have given to present practices challenges the impossibility of there being one good custom which shall not corrupt the world. But the distinction between "Then and Now" and the "Passing of Arthur" in this matter is only surface deep. If the custom is not to corrupt the world, it must adapt itself to the changes of time, and the 25th of December, the day of the reappearance of Tammuz, can only be rightly and expediently celebrated as Christmas Day (see page 7 of Mr. Witt's book), just as the Knights of Arthur can only be rightly and expediently perpetuated now by knights-errant who carry on the work of good with weapons other than the lances and swords which did in essence the same work in old Caerleon and Camelot.

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*The Law of Divorce applicable to Christians in India (the Indian Divorce Act, 1869).* By H. A. B. RATTIGAN, B.A. Oxon., of Lincoln's Inn, Barrister-at-Law, and an Advocate of the High Court of the North-West Provinces and of the Chief Court of the Punjab. Wildy and Sons, Lincoln's Inn Archway, London. The "Pioneer" Press, Allahabad. Pp. 460. 1897. Price 18s. net.

The Law of Divorce in India sufficiently resembles the Law of Divorce in England to make the decisions under the Indian Act afford valuable illustrations, which will be useful to those who are studying questions of our own law; and Mr. Rattigan's careful work should therefore be of considerable value in our own country. At the same time there are differences no less important than the resemblances; and the student of comparative legislation will observe these closely and particularly. For



instance, by Sect. 18 of the Indian Act, only the husband or the wife can sue for a decree of nullity of marriage; whereas, in England, any person having a sufficient interest in annulling a marriage, may sue for a declaration of nullity. (See page 127 of the work before us.) Again by the law of England, the children of a void marriage are illegitimate for all purposes; the Indian law on this subject is more lenient, and it is a subject for consideration whether it be not more just. (This portion of the Indian law will be found on page 148.) But the most striking peculiarity of the Indian law is that which appears upon the face of the title page. There is, in India, one law for "Christians" upon this subject and another law for non-Christians. English Divorce Law has so cut itself adrift from considerations of religion that, to those educated in that law, it seems somewhat startling to find that in India this particular enactment (Act No. IV. of 1896) applies only to a petitioner who "professes the Christian religion," and that the fact that the husband and wife were married according to the rites of the Christian religion makes no difference, if, at the time of presenting the petition, this "profession" is not made. This treatise, however, for the reasons we have mentioned, will be valuable in this country, while in India—seeing that it is the only recent edition of the Act in question—we imagine it will be a necessary addition to the library of every lawyer, who practices in divorce, throughout the Empire to which it applies.

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*A Treatise on the Law relating to Debentures and Debenture Stock issued by Trading and Public Companies and by Local Authorities, with forms and precedents.* By PAUL FREDERICK SIMONSON, M.A., Oxon., of the Inner Temple, Barrister-at-Law. Effingham Wilson, and Sweet & Maxwell, Ltd. Pp. 521. 1898. Price 21s.

Here we return again to the region of strict law; and law in one of its most complicated and difficult departments. This book supplies a want. Excellent as are the books of Mr. Palmer, Mr. Buckley, Mr. Chadwyck-Healey, and the Master of the Rolls, in one or other of which nearly everything that is to be said about Company Law has been said, there is still room for a special treatise on Debenture Law. For the position of debenture-holders is something quite different from that of the other persons most generally interested in Company Law. It is the position of persons who have invested their savings, often at a

moderate interest, in what they believe to be a safe security, and who are completely innocent of all the chicanery and manipulation which is frequently being carried on by those having other interests in the same company. Mr. Simonson has collected into his one volume a vast number of cases (which are well tabulated at the beginning of his work, with the date appended to each case), and a large body of statutes and rules bearing upon this particular aspect of Company Law; and when it is observed that the whole fills more than 500 royal octavo pages, it will be obvious that there is more matter to be found here for study of Debenture Law than in any of the general volumes concerning Company Law to which we have alluded—none of those works being of sufficient dimensions to admit of so large a wealth of illustration upon this one subject in conjunction with all the other subjects therein discussed. We should certainly not advise a debenture-holder's action or other proceedings to be commenced without some consultation of this work, and we know of no other "forms and precedents" so particularly adapted for the purposes of a debenture-holder's action or proceedings as those which are contained at the end of this volume. The work is completely up-to-date, and includes a notice of such recent cases as *In re The Western Counties Steam Bakeries Company*, [1897] 1 Ch. 617, and *Madeley v. Ross, Sleeman and Company*, [1897] 1 Ch. 505, and *The Attorney-General v. The New York Breweries, Limited* (41 Sol. Jo. 454).

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*The Law of Master and Servant; with a chapter on Apprenticeship.*  
By ERNEST ALBERT PARKYN, M.A., of the Inner Temple,  
Barrister-at-Law. Butterworth and Co., and Shaw and Sons.  
Pp. 214. 1897.

"Domestic and menial servants, clerks, shopmen, omnibus and tramway men, and those employed in professional pursuits," says the author of this hand-book quite correctly, "come under the common law, *with which this work more particularly deals.*" We wish that the author had known enough of his own mind to definitely fix upon the subject which he intended to discuss. The very small space which he had at command was barely enough for a most fragmentary notice of the common law of the subject alone, and certainly not a tenth part of the important cases are given. The whole vast subject of "wilful disobedience to lawful orders" is dismissed with less than two pages. And

this presumably to make room for the text of certain statutes which the author deals with "less particularly." We should have preferred that he had omitted them altogether, and had devoted more space to informing us what the lawful orders are which we may give to our domestic servants. A half-commentary on one subject, and an appendix of difficult and unexplained statutes on another subject, make a volume which is of no practical use to anybody, whether lawyer or layman.

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*Handbook to the Workmen's Compensation Act, 1897 ; with approved Schemes of Compensation, Statutes referred to, Notes and Decisions on Accidents, Negligence and Misconduct, Employers' and Workmen's Liability, Actions independent of the Act, Arbitrations, Forms of Notices, &c., together with the principal explanatory remarks of the Lord Chancellor, Lord Herschell, the Home Secretary, the Colonial Secretary, the Attorney-General, Mr. Asquith, and other Statesmen.* By M. ROBERTS-JONES, Barrister-at-Law of Gray's Inn, Coroner for South Monmouthshire, and Member of the Board of Management of the Monmouthshire and South Wales Miners' Provident Society. Cardiff: *Western Mail*, Ltd. London: 82, Fleet Street. Pp. 80. Price 2s.

As a rule we do not consider an annotated edition of an Act of Parliament, which has only just become the law of the land and has not been tried or submitted to the fire of judicial decision, to be of any great value to the lawyer. The Lord Chancellor's remarks and those of the other statesmen whose names appear on the title-page of the Bill are of hardly any assistance at all to the lawyer who wishes to interpret the meaning of the words of the Statute, now that it has become law. Mr. Roberts-Jones, however, has done something more than merely cut out extracts from the *Times* debates and paste them opposite to a Queen's Printers' copy of the Act. He has made a careful study of the whole subject and has supplied some useful forms; and if the book does not afford much assistance to a Court which has to interpret the meaning of the sections, yet we think it will be a good book for any solicitors to consult who have at an early stage to put the Act in force. The advertisements at the beginning cite the review of our contemporary *The Tarian*, as saying "It should be in the hands of every workman." With deference, we cannot see that that would lead to any desirable result: and it is not a result likely

to occur, for we cannot recommend them to invest so large a sum (to them) as two shillings. If they wish for the Act at all—and Heaven forbid that “every workman” should have occasion to be reading up the law in this way before the Act can do its work—let them buy a copy from the Queen’s Printers. That will be quite enough for at least the vast majority of workmen. We should conclude by saying that in spite of its high-sounding title-page, the work of Mr. Roberts-Jones is nothing much more than a pamphlet consisting of eighty small pages.

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*Employers' Liability under the Workmen's Compensation Act, 1897, and the Employers' Liability Act, 1880.* By ARTHUR ROBINSON, B.A., of the Middle Temple and North-Eastern Circuit, late Scholar of Jesus College, Cambridge, one of the Examiners of the High Court of Justice, and author of “The Law Relating to Income Tax.” Stevens and Sons. Pp. 125. Price 6s.

We are rather weary of treatises on Employers' Liability. The works of Mr. Roberts and Mr. Wallace, Mr. Spens and Mr. Younger and Mr. Minton-Senhouse pretty well exhaust all that is to be said upon the older Act; while a commentary on the new Act is in our opinion premature. However, Mr. Robinson's work is the newest: his arrangement seems good; and we have detected no inaccuracy. And so those who are looking for a commentary on the subject, which shall be completely up to date, cannot probably do better than invest in that before us.

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*Law and Politics in the Middle Ages, with a synoptic table of sources.* By EDWARD JENKS, M.A., Reader in English Law in the University of Oxford, Lecturer at Balliol College, and formerly Fellow of King's College, Cambridge. John Murray. 1898. Pp. 352.

This is an academical work, and deals with a subject which only the few among practising barristers have much time or inclination to investigate. But the few will like it who do read it. It is learned and thoughtful, and it is well written. And at the Universities, where it seems that some men prefer to leave the dear old beaten track which took them from Homer to Plato, and from Herodotus to Xenophon, and sit under the chair of a “Reader in English Law” instead, an audience should surely be found who will be interested in subjects like “the church's cattle,” and the “Wergild” discussed in the present volume. And an audience so educated will probably produce

one or two men from time to time, who will assist in the work which under the auspices of the Selden Society and other patrons has been progressing rapidly of late—we mean the work of tracing out the history of the origin and developments of that great system called the Law of England, and so in some measure to assist us in determining the right answer which should now be made to doubtful questions of principle in that law as it stands to-day. The practical use of such historical arguments to barristers who merely desire to win their cases is steadily diminishing—steadily yielding more and more to the “business” point of view; but the Muse of History will always be heard for her own sake.

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*An Analytical Digest of Cases decided in the Supreme Courts of Scotland, and on Appeal by the House of Lords, from July 20th, 1885, to July 20th, 1895.* Compiled from the Sessions Cases by HUGH J. E. FRASER, GEORGE L. MACFARLANE, JOHN DAVID SYM, and A. O. M. MACKENZIE, Advocates. T. & T. Clark. 1897. 1,392 columns.

*The Canadian Annual Digest, 1896, of the Cases reported in the Canadian Courts; and of the Canadian cases decided by the Judicial Committee of the Privy Council during the year, with tables of the cases digested, cases affirmed, reversed or specially considered, and of the statutes referred to.* By CHARLES H. MASTERS and CHARLES MORSE, LL.B. Canada Law Journal Company. 1897. Pp. 372.

These two digests which have been sent to us afford illustrations, not only of the industry of Her Majesty's Judges in different parts of the world, but of the thorough and laborious way in which their decisions are studied in those different parts of the world by those whose practice of the law calls for such a study. The most elaborate systems of digesting cases which prevail in England are followed by our Scotch and Canadian friends; and we have no doubt of the usefulness of these works to those who are concerned with their respective subjects.

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#### NEW EDITIONS.

**2nd Edition.** *The Elements of Mercantile Law.* By T. M. STEVENS, D.C.L., of Christ Church, Oxford, and of the South-Eastern Circuit, Barrister-at-Law. Pp. 462. Price 10s. 6d.

There is some good work in this new edition; but we do not very much approve of the author's plan of making several state-

ments (according to his own account—see note of p. 270), for which he is not prepared with any authority except the text of a bill which has not yet been declared to be law. The result may work out satisfactorily in the particular case, which is that of the law of marine insurance; but the precedent is a bad one. It is for binding authority that we consult a treatise; and anything which is questionable is worse than useless.

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**2nd Edition.** *A Selection of Leading Cases in the Criminal Law (Founded on Shirley's Leading Cases) with Notes.* By HENRY WARBURTON, Barrister-at-Law of the Inner Temple, and of the South-Eastern Circuit, and Central Criminal Court. Stevens and Sons, Limited. 1897. Pp. 292. Price 10s. 6d.

Mr. Warburton is a good guide to the leading cases in the criminal law. Himself one of the most successful of rising advocates at the Old Bailey and well read in this department of learning, he is much more fitted than the original author of Shirley's Leading Cases to teach the principles of criminal law. There is no way of teaching at all comparable to the study of leading cases; and Mr. Warburton has studied the old authorities and well illustrated their decisions by his notes of modern instances. We were ourselves in Court when he argued before Sir Henry Hawkins in favour of the contrary proposition to that which the Court upheld in *R. v. Neill*. This case is cited by him in the notes to *R. v. Gaering*, 18 L.J. M.C. 215, on page 106 of the present edition; and these notes are a masterly exposition of the law upon a difficult subject. We are glad to follow him now setting forth the law of the land as it is, as correctly as could be; though he certainly convinced us of the contrary when we heard him arguing it in the hope of saving the neck of the ruffian Neill, who was afterwards rightly hanged. The present edition is up to date; and includes such a recent leading case as *R. v. Lillyman*, [1896] 2 Q.B. 167, as to the admission of evidence of the "complaint" made by the prosecutrix in a certain kind of case and the extension of the rule to the details of such complaint. Every Old Bailey practitioner ought to have this book by heart.

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**2nd Edition.** *A General View of the Law of Property.* By J. ANDREW STRAHAN, M.A., LL.B., of the Middle Temple and Midland Circuit, Barrister-at-Law; Regius Professor of English

Law, Queen's College, Belfast ; Senior Scholar in the Law of Property, Middle Temple, 1881 ; Joint Author of Fisher and Strahan's "Law of the Press," and Macassey and Strahan's "Law relating to Civil Engineers and Architects." Stevens and Sons, Limited. 1897. Pp. 388. Price 12s. 6d.

The Land Transfer Act, 1897, is the chief addition to this work since its first appearance ; and the author alludes to it as another instance of the general fusion of the law relating to real and personal property into one harmonious branch, and thus justifies the principle which he has throughout adopted of considering both branches together as belonging to the same subject. We think that he is right. The tendency of legislation is altogether in that direction : and students will understand the general current of the modern decisions affecting property of both descriptions by mastering the legal propositions contained in this book, which has deservedly reached a second edition and is likely to reach more editions in the future.

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**3rd Edition.** *Notes on Perusing Titles containing observations on the points most frequently arising on a Perusal of Titles to Real and Leashold Property, with an Epitome of the notes arranged by way of reminders, with an Appendix on the appointment of a real representative by the Land Transfer Act, 1897.* By LEWIS E. EMMET, Solicitor. Jordan & Sons, Ltd. Pp. 376. 1897. Price 7s. 6d. net.

Nothing but practical experience and sitting at the feet of a learned man who understands the subject can teach a man this most difficult science. But, given those advantages, this book will be of great assistance to the learner. The chief point of the new edition is the Appendix on the appointment of a "real representative" under the Land Transfer Act, 1897. "The duties of the real representative," says Mr. Emmet, summarising the new law, "are to administer the real estate of the testator or intestate in a similar way to that in which a personal representative administers personal estate." And the new machinery will be easily understood by readers of this Appendix. Mr. Emmett is not responsible for the expression "real representative," which, as a matter of English, offends our ears: a "personal representative" is, as a matter of law, a representative of the deceased *qua* his personalty, but as a matter of English he is the representative of a person ; as a matter of law, the analogy

is well enough that there should be a similar representative of the deceased *quod* his realty, but as a matter of English "real representative" is indefensible; but the legislature is to blame, for the correct title of the statute is "an Act to establish a real representative and to amend the Land Transfer Act, 1875."

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**3rd Edition.** *A Compendium of the Law relating to Executors and Administrators; with an Appendix of Statutes annotated by means of references to the text.* By W. GREGORY WALKER, B.A., author of the first edition of this work, and EDGAR J. ELGOOD, B.C.L., M.A., both of Lincoln's Inn, Barristers-at-Law, and late scholars of Exeter College, Oxford, joint authors of "The Law Relating to the Administration of the Estates of Deceased Persons." This edition by EDGAR J. ELGOOD. Stevens and Haynes. Pp. 445. 1897. Price 21s.

The Land Transfer Act, 1897, is not the occasion of this new edition, as the author tells us it was passed as his work was going through the press. But he seems to have given us the substance of it; and the book maintains its good quality as a brief summary of the law upon the subjects in question, full treatment of which is, of course, far beyond the scope of so small a work. The full table of cases, with references to all reports, forms an attractive feature of this book.

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**3rd Edition.** *Principles of Pleading, Practice, and Procedure in Civil Actions in the High Court of Justice.* By W. BLAKE-ODGERS, M.A., LL.D., Q.C., late Scholar and Law Student of Trinity Hall, Cambridge, Author of "A Digest of the Law of Libel and Slander," Recorder of Winchester. Stevens and Sons, Limited. Pp. 468. 1897. Price 12s. 6d.

This is, on the whole, the best book on the modern system of pleading which exists. No modern book upon this subject can ever attain the position of the old "Bullen and Leake," for pleading is no longer the test of legal principles, which it was formerly. If pleading is less important than it was, and if it requires less learning and preciseness than it did, it is still important enough to win a reputation, and it still requires learning and preciseness enough for this—bad pleading will still place the barrister's client in very awkward predicaments, and lead to the complete failure of the pleader in his profession. And of all men who have thoroughly mastered the principles of the modern system,



and shewn themselves skilled in the art of applying it. Dr. Blake-Ogders stands among the first. We fancy that when he took silk, solicitors often found it difficult adequately to supply his place, so far as this department of a junior's practice is concerned—especially when his special subjects of libel and slander were concerned, in which perhaps pleading is more important to-day than in any other class of actions. We have seen some very clever pleadings drawn by this learned lawyer in libel and slander cases. We are glad to welcome this new edition of what promises to be the leading work upon the subject, and we are glad to see the book advancing in bulk, for the only fault we have found with it in practice hitherto is that too much was sacrificed to brevity.

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**3rd Edition.** *A Concise Treatise on the Law of Arbitrations and Awards, with an Appendix of Precedents and Statutes.* By JOSEPH HAWORTH REDMAN, of the Middle Temple, Barrister-at-Law, Author of "A Treatise on the Law of Railway Companies as Carriers," "The Law of Landlord and Tenant," etc. Butterworth & Co. Pp. 438. 1897. Price 18s.

This work has had to be practically re-written since the last edition, for the important Act of 1889 has been passed since the last edition. The book is now a very useful one for practical purposes. It is not nearly so large as "Russell on Arbitration," and it is, moreover, some years since the last edition of that well-known book was published. We expect that a great many practitioners will now adopt Mr. Redman's book as the best to carry about with them, and that at places like the Surveyors' Institute it will be a very common thing to see a copy of it upon the table of the arbitration room.

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**4th Edition.** *The Students' Guide to the Principles of the Common Law.* By JOHN INDERMAUR, Solicitor. Geo. Barber. 1897. Pp. 137. Price 5s.

**4th Edition.** *A Manual of the Principles of Equity, especially Written for Students.* By JOHN INDERMAUR, Solicitor. Geo. Barber. 1897. Pp. 542. Price 18s.

**4th Edition.** *The Students' Guide to the Law of Real and Personal Property and Conveyancing.* By JOHN INDERMAUR, and CHARLES THWAITES, Solicitors. Geo. Barber. 1897. Pp. 224. Price 10s.

It is written in Coke upon Littleton, "Melius est petere fontes quam sectari rivulos" (Inst. I., Lib. iii., cap. ix., sect. 538),

and upon this principle, we do not as a rule recommend students to prepare themselves for their profession by reading a series of crammers' note-books, which may help them to satisfy examiners, but will be of little further advantage to them. We should rather urge students to read some work like Smith's *Leading Cases* or the old "Bullen and Leake" if they would learn the Principles of the Common Law, and likewise White and Tudor's *Leading Cases* for their Equity; and generally to look for themselves at the most important statutes and cases which affect the subject matter that they have in hand. For instance, on the subject of the first of the above-named books, every student should consult the excellent work of Hood and Challis. But the authors of these particular books for students recognise the truth upon which we have been laying stress; and introduce their readers throughout to the names of the books which they ought to read. Used intelligently therefore, these books may be very advantageous; just as a "crib" may be very advantageous to the scholar working at a classical author who uses it intelligently, though it is of necessity forbidden to the idle school-boy who merely desires by its use to shirk his work. There is no doubt that in fact these books are largely read by students: and as it is important that students' books should be up to date, we are exceedingly glad that these new editions are forthcoming.

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\* \* Owing to want of space the following reviews are held over until next issue:—*A Treatise on the Law of Collisions at Sea*, by R. G. MARSDEN. Stevens and Sons. *The Yearly County Court Practice*, 1898, by G. PITT-LEWIS, Q.C., and ARNOLD WHITE. Butterworth and Co.; Shaw and Sons.

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#### SOME WORKS OF REFERENCE

*The Royal Blue Book Fashionable Directory and Parliamentary Guide*, 1898. Kelly's Directories, Ltd. Pp. 1,420. Price 5s.

This invaluable directory now makes its appearance for the seventy-fifth year in succession. In any event the circumstance is one which appears to render superfluous any detailed reference to the work. Glancing through the pages of the current issue, we do not note any important changes in the method of compilation, nor, for that matter, any new departures in other directions; and, indeed, we fail to see where there would have been room for any improvements. Clearness and

conciseness have ever been the watchwords of those responsible for the "Royal Blue Book," with which, be it remembered, are incorporated a fashionable directory and Parliamentary guide, and those two qualities are once again to be met with in the current issue, which, doubtless, notwithstanding the presence of more recent rivals, will find fully as many purchasers as have the seventy-four volumes that have preceded it.

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*The Peerage and Baronetage of the British Empire.* By EDMUND LODGE. Hurst & Blackett, Ltd. Pp. 1,077.

This well-known and valuable book is in its sixty-seventh year, and many valuable additions have been made to the 1898 edition. A list of the Queen's Household has been added; the Armorial Bearings have been carefully revised and renewed where necessary. Cross references appear in the case of all eldest sons of Dukes, Marquesses and Earls actually bearing "Courtesy Titles," and altogether we think "Lodge" will be found a most complete repertory of all useful knowledge on the subject of the titled classes of the realm.

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*Whitaker's Almanack*, 1898. Whitaker & Sons. Pp. 776. Price 2s. 6d.

This publication is so well known that it seems almost unnecessary on our part to say anything as to its merits. How any business man can get on without it we are unable to understand, and in the household it is really more useful and is certainly more frequently referred to for the settlement of friendly arguments than, say, the "Encyclopædia Britannica." It contains a mine of facts both interesting and useful, and as it seems to be everybody's business to keep the "Almanack" up to date, it is probably the most reliable work of reference in existence.

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*The Lawyer's Companion and Diary and London and Provincial Law Directory*, 1898. Edited by E. LAYMAN. Stevens and Sons. Price 7s. 6d.

This is the fifty-second annual issue of an indispensable legal work so well-known to barristers and solicitors that any further reference to it on our part would be superfluous. It is in fact the legal *Whitaker*, and, apart from lawyers, business men generally will find it a useful addition to the office equipment.

# Quarterly Digest

OF

## ALL REPORTED CASES

IN THE

### Two Times and Two Reports

FOR OCTOBER, NOVEMBER, AND DECEMBER, 1897.

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## D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the reference to the additional report is given in the Index only, after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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### Administration:—

- (i.) **C. D.**—*Insolvent Estate—Preferential Payment—Preferential Payments in Bankruptcy Act, 1888—Application of Act to Estate being Administered in Chancery Division.*—The preferential payments in Bankruptcy Act, 1888, applies to debts due from the estate of a deceased insolvent, dying after the commencement of the Act and whose estate is being administered in the Chancery Division.—*In re Heywood; Parkington v. Heywood*, L.R. [1897] 2 Ch. 593; 77 L.T. 423.

### Admiralty:—

- (ii.) **H. L.**—*Collision—Loss of Use of Dredger—Damage Indefinite—Right of Harbour Trustees to Sue.*—Decision of Court of Appeal (22, 28, ill.) reversed.—*The Greta Holme*, L.R. [1897] A.C. 596; 77 L.T. 281.

### Appointment:—

- (iii.) **C. A.**—*Construction—Stock Sufficient to Raise a "Net" Sum—Succession Duty.*—An appointment by a tenant for life under a power in a marriage settlement of so much of the trust funds as should be sufficient to raise the net sum of £2,000 in favour of the appointee was held to give the appointee the £2,000 clear of all charges, including succession duty.—*In re Saunders; Saunders v. Gore*, 77 L.T. 450.

### Arbitration:—

- (iv.) **C. A.**—*Misconduct—Remitting Award for Re-consideration—Special Case to be Stated—Arbitration Act, 1889, ss. 10, 11, 19.*—If a party to an arbitration acting *bona fide* requests an arbitrator either to state a

special case raising a material point of law in the reference, or to delay his award until the party can apply to the Court for an order directing a special case, and the arbitrator refuses either request, he is, *prima facie*, guilty of misconduct within the meaning of sect. 11 of the Arbitration Act, 1889, and the Court may set aside the award under that section or remit it for further consideration under sect. 10.—*In re An Arbitration between Thos. Palmer & Co. and Hosken & Co., Limited*, 77 L.T. 850.

### Bankruptcy:—

- (i.) **C. A.**—*Creditor—Verbal Contract for Loan to be re-paid by Share of Profits—Postponement to other Creditors—Partnership Act, 1890, s. 8.*—Where a person lends money under a contract, whether written or verbal, that he is to receive a share of the profits of the borrower's business until the loan is paid off, if the borrower becomes bankrupt, the lender cannot recover anything in respect of his loan until the other creditors have been satisfied. Decision of Court below (77 L.T. 404) reversed.—*In re Fort; e.p. Schofield*, L.R. [1897] 2 Q.B. 495; 77 L.T. 274.
- (ii.) **C. A.**—*Receiving Order in Lieu of Committal Order—Foreigner Domiciled and Resident Abroad—Bankruptcy Act, 1883, s. 103 (5).*—The Court can under sect. 103 (5) of Bankruptcy Act, 1883, make a receiving order in lieu of a committal order against a debtor, although a foreigner domiciled abroad and only temporarily in England.—*In re Clark; e.p. Clark*, 77 L.T. 417.
- (iii.) **Q. B. D.**—*Solicitors to Trustee—Money Recovered or Preserved in the Bankruptcy Proceedings—Charging Order under s. 28 of the Solicitors' Act, 1860—Jurisdiction of Bankruptcy Court to make.*—A receiving order having been made in this country against a person arrested in Australia for forgery; the solicitors to the trustees obtained from the police in Australia a sum of money found in the possession of the bankrupt. The solicitors claimed to have a charging order on this money under the Solicitors' Act, 1860, sect. 28, both for their bankruptcy costs and the costs in the prosecution. *Held* (1) that the money had not been recovered or preserved by the solicitors, in or by the bankruptcy proceedings; (2) that *semble*, there was no jurisdiction in the Bankruptcy Court to make a charging order under the Solicitors' Act, 1860, sect. 28; (3) that assuming (1) and (2) had been in the affirmative the Court had not sufficient evidence to enable them to determine to what costs the order ought to extend.—*In re Humphreys; e.p. Roberts*, 77 L.T. 501.
- (iv.) **Q. B. D. in B.**—*Execution—Lying for over £20—Sale by Sheriff—Notice of Bankruptcy Petition—Death of Judgment Debtor—Administration Order—Bankruptcy Act, 1883, ss. 45, 125, sub-s. 6—Bankruptcy Act, 1890, s. 11, sub-s. 2.*—A sheriff within 14 days after selling under an execution, received notice of a bankruptcy petition against the judgment debtor who died shortly afterwards. After the 14 days the sheriff received notice of a petition under sect. 125 of the Bankruptcy Act, 1883, for administration of the estate of the deceased debtor, on which an administration order was subsequently made. *Held*, that the judgment creditor was, under the circumstances, entitled to the money in the hands of the sheriff. *Query*, whether an administration order is equivalent to a receiving order for the purposes of sect. 11 of the Bankruptcy Act, 1890.—*Watkins v. Barnard*, L.R. [1897] 2 Q.B. 521.

### Betting:—

- (v.) **Q. B. D.**—*Betting-house—Person found in—Jurisdiction of Magistrate to require Recognizance—33 Henry VIII., c. 9, s. 14—Gaming Act, 1845, s. 8—Betting Act, 1853, s. 11.*—A magistrate has power, under

83 Henry VIII., c. 9, s. 14, to require persons arrested in betting-houses to enter into recognisances "no more to play, haunt, or exercise from thenceforth" at any gaming-house, although such persons were only found in such houses.—*Murphy v. Arrow*, L.R. [1897] 2 Q.B. 527; 77 L.T. 485.

### Bill of Exchange:—

- (i.) **Q. B. D.**—*Dishonour—Action on Consideration while Bill in Third Person's Hands.*—An action does not lie on the consideration of a dishonoured bill while that bill is outstanding in a third person's hands.—*Reilly v. Davies*, 77 L.T. 399.
- (ii.) **C. A.**—*Notice of Dishonour—Notice to Bank with Branches—Notice sent to Wrong Branch—Due Notice—Bills of Exchange Act, 1882, s. 49.*—Notice of dishonour of a bill of exchange was, by mistake, sent to the Cirencester branch instead of to the Cardiff branch of the County of Gloucester Bank. The mistake being discovered, notice by telegram was sent early the next morning to the Cardiff branch. Thereafter due notice of dishonour was given to all parties to the bill. *Held*, that due notice of dishonour was given to the County of Gloucester Bank, in accordance with sect. 49 of the Bills of Exchange Act, 1882.—*Fielding & Co. v. Corry and Others*, 77 L.T. 453.

### Bottomry:—

- (iii.) **Adm.**—*Bottomry—Necessaries—Ship and Cargo—Freight—Marshalling of Assets.*—Where the proceeds of ship and freight belong to the ship-owners and the proceeds of cargo belong to the cargo-owners, and against both funds the holder of a bottomry bond on ship, freight, and cargo has obtained a judgment, the Court will not marshal the proceeds of ship, freight, and cargo in favour of necessaries men who have obtained a judgment against ship and freight, notwithstanding that the bottomry bondholders would not be prejudiced thereby.—*The Chioggia*, 77 L.T. 472.

### Building Society:—

- (iv.) **C. A.**—*Alteration of Rules—Repayment of fully Paid-up Shares—Building Societies Act, 1874, ss. 7, 16, 18—Building Societies Act, 1894, ss. 1, 28.*—At a special meeting of a building society, formed under 6 & 7 Will. IV., c. 32, and incorporated under the Building Societies Act, 1874, a new rule was agreed to by which nearly three-tenths of the amount paid on the shares was written off. *Held*, that by sect. 16 of the Building Societies Act, 1874, and sect. 1 of Building Societies Act, 1894, the new rule was not *ultra vires*.—*Strahmenger v. Borough of Finsbury Permanent Investment Building Society*, L.R. [1897] 2 Ch. 469; 77 L.T. 285.

### Collision:—

- (v.) **P. C.**—*Rules for Preventing Collisions at Sea, 1884, ss. 16, 21, 22—Crossing Vessels in Rivers—Keeping Course—Navigating on Starboard Side of Channel.*—A steamship on the starboard bow of another steamship in a winding river *held* not to blame for a collision although she ported her helm, because in porting she was keeping the course which should have been attributed to her, inasmuch as it was necessary for her to do so in order to arrive at that side of the channel which lay on her starboard bow. There had been no contravention of Article 23 of the Regulations for Preventing Collisions at Sea, 1884.—*Owners of Norwegian Steamship Normandie v. Owners of British Steamship Pekin*, L.R. [1897] A.C. 582; 77 L.T. 443.

**Colonial Law:—**

- (i.) **P. C.**—*Contract—Construction.*—Under an agreement by which a mining company agreed to obtain and purchase all the water required by them for their mining purposes from a water company and from no other person or company whatsoever, with a proviso that the mining company might use any water obtained by them from their mines. *Held*, that the mining company were not entitled to obtain water elsewhere gratuitously; also that the proviso in question was not limited to mines existing at the time of the agreement.—*Kimberley Waterworks Company v. De Beers Consolidated Mines Company*, L.R. [1897] A.C. 515; 77 L.T. 116.
- (ii.) **P. C.**—*Law of Lower Canada—Right to Lay Wires Under Streets—Power of Municipality to Interfere.*—55 & 56 Vict., c. 77—56 Vict., c. 78.—A company was authorised under above Acts to lay underground wires along the streets of any town upon reporting to the municipal council of such town the nature of the projected works, such council being thereupon empowered to oversee and prescribe the mode in which the streets were to be opened. *Held*, that reasonable notice having been given by the company to the council and no action taken by it, the company were thereafter at liberty to execute their said works without any interference by the council.—*City of Montreal v. Standard Light and Power Company*, L.R. [1897] A.C. 527; 77 L.T. 115.
- (iii.) **P. C.**—*Will—Construction—Lower Canada Civil Code, Arts. 932, 963—Degrees of Substitution.*—Under a gift by will to K. for life, and after her death to M., A., and T. "conjunctly and in equal shares" for life, and after their decease to their children, "share and share alike," and "if two of the three persons, M., A., and T., shall die without children," that the said "property shall go and belong to the child or children of the survivor" with a gift over in the event of all the three dying without children. On the death of M. and A. without children and the survival of T. leaving a child, *held*, that there were only two degrees of substitution, and that the devise did not come within the prohibition in art. 932 of the Civil Code, under which substitutions created by will cannot extend to more than two degrees exclusive of the institute.—*De Hertel v. Goddard and Others*, 77 L.T. 113.
- (iv.) **P. C.**—*Ceylon—Unregistered Settlement—Registered Mortgage—Priority—Land Registration Ordinance, No. VIII., of 1863.*—An ante nuptial settlement by an intended wife of land in Ceylon was never registered. The husband and wife afterwards joined in a mortgage of the land, which was duly registered. *Held*, the interest of the mortgagees was adverse to that of the trustees of the settlement within the meaning of sect. 39 of the Land Registration Ordinance, No. VIII., of 1863, and that the title of the trustees was subject to the mortgage.—*Gauder v. Dassanaike and Others*, L.R. [1897] A.C. 547; 77 L.T. 321.
- (v.) **P. C.**—*Natal Law Practice—Setting Aside Verdict—Jurisdiction of Court.*—By the law of Natal the verdict of a jury cannot be set aside unless it be such as they could not reasonably find. The Judges cannot set aside a verdict as if they were a Court of Appeal upon questions of fact.—*Pearse v. Schneider & Co.*, L.R. [1897] A.C. 520.
- (vi.) **P. C.**—*Ontario—Life Policy—Proviso for Cash Payment of Premium—Onus Probandi—Payment of Premium by Note Discounted.*—Under a life policy which provides that if a note be taken for the first or renewal premium and not paid, the policy is void, the onus is on the policy holder to prove cash payment of the premium. An agent who accepts a note in payment of a premium which is not duly met has no implied authority to raise money on it as agent for the insured and

pay the premium out of the proceeds. No presumption of an intention on the part of the insurers to treat the agent as agent for the insured arises from the fact that they accept their agent's note in discharge of an account current between them in which the agent is debited with the amount of the premium.—*London and Lancashire Life Assurance Co. v. Fleming*, L.R. [1897] A.C. 499.

- (i.) **P. C.**—*Jamaica — Practice — Ejectment Action — Withdrawal of Facts from Jury — Misdirection.*—Where in an action of ejectment the plaintiffs' title is admitted it is misdirection to withdraw the facts from the jury (who could not agree) and direct a verdict for the defendants on the ground that the plaintiffs had not proved possession during any part of the statutory period.—*Kingston Race Stand v. Mayor and Council of Kingston*, L.R. [1897] A.C. 509.
- (ii.) **P. C.**—*Special Leave to Appeal in Criminal Cases — Consular Court in Japan — Foreign Jurisdiction Act, 1843.*—Under the Foreign Jurisdiction Act, 1843, the Queen can, by Order in Council, constitute for Japan a Court with a jury of five with jurisdiction over the subjects of the Crown. The rule as to special leave to appeal in criminal cases laid down in *In re Dillet*, 1887, 12 App. Cas. 459 re-affirmed.—*E. p. Carrew*, L.R. [1897] A.C. 719.

### Company :—

- (iii.) **C. D.**—*Private Company — Sale of Business to, in Consideration of Shares — Liability to Account for Over-valuing Goodwill — Managing Director's Salary — Liability to Account for, when drawn without Authority — Knowledge and Acquiescence of Shareholders.*—Where the owner of a business sold it to a private company, of which he was sole director, the consideration for the sale being wholly satisfied in shares, it was held, that in the absence of fraud and under the circumstances he was not accountable to the company for over-valuing the goodwill of the business in estimating the purchase price. A managing director had drawn a reasonable salary without the authority of any resolution or any specific notice to the shareholders, but the item appeared in the accounts, and every shareholder either knew or had the means of knowing the fact. Held, that the director was not liable to account to the company for the money.—*Felix Hadley & Co., Limited, v. Hadley*, 77 L.T. 131.
- (iv.) **H. L.**—*Option to Take Shares — Liquidation — Measure of Damages for Breach of Contract to Issue Shares.*—A company is not fettered in its operations by reason of having given a person an option to take its unissued shares at a future date at an agreed price. In a winding-up such a person is entitled, if he chooses to exercise his option, to have the shares issued and be put on the list of contributors, and if the liquidator refuse to do so the measure of such person's damages is his share in the existing assets less the agreed price of the shares.—*Hirsch and Co. v. Burns and Another*, 77 L.T. 377.
- (v.) **C. A.**—*Winding-up — Directors' Liability — Misfeasance — Meaning of "Subscribe for" Shares — Companies (Winding-up) Act, 1890, s. 10.*—A contract to "subscribe for" shares in a company is not the same as to "take" personally, but may be satisfied by procuring an allotment to be made to persons approved by the directors. Even if "subscribe for" means "take," the obligation to take may be discharged by the acceptance by the directors of a nominee of the person bound to take. A mere allotment of shares, whether ordinary or founders' shares, by directors to themselves is not sufficient to support a charge of misfeasance under sect. 10 of the Companies (Winding-up) Act, 1890, sect. 10.—*In re The London and Colonial Finance Corporation, Limited*, 77 L.T. 146.



- (i.) **C. D.—No Profits—Debenture Interest Paid out of Capital—No Obligation to replace Loss of Capital out of Subsequent Profits before Declaring Dividend.**—A company is not bound, before declaring a dividend in any year, to apply the profits of that year in replacing the amount paid out of capital for debenture interest in previous years.—*Bosanquet v. St. John D'El Rey Mining Company, Limited*, 77 L.T. 206.
- (ii.) **C. D.—Winding-up—Right to present Petition—Article Negating Shareholder's Right—Ultra Vires—Companies Act, 1862, s. 82.**—The articles of association of a company cannot take away the statutory right of a shareholder under sect. 82 of the Companies Act, 1862, to present a winding-up petition.—*In re Peveril Gold Mines, Limited*, 77 L.T. 484.
- (iii.) **C. D.—Winding-up—"Just and Equitable" Grounds for—Substratum of Business gone—Primary and Incidental Objects—Companies Act, 1862, s. 79, sub-s. 5.**—Where the principal business for which a company was formed had come to an end, and the directors, instead of proceeding to wind-up its affairs, were contemplating the carrying on further business as being within the later objects of its memorandum. *Held*, that such objects, though within the general terms of the memorandum, were merely incidental to the main business, and that being gone, it was just and equitable that the company should be wound-up under sect. 79 (5) of the Companies Act, 1862. *Seem*, the words "just and equitable" in clause (5) are no longer to be read as *ejusdem generis* with the grounds for winding-up mentioned in the earlier clauses of sect. 79.—*In re Amalgamated Syndicates*, L.R. [1897] 2 Ch. 600; 77 L.T. 481.
- (iv.) **C. A.—Directors—Defect in Appointment—Clauses in Articles as to Validity of Calls—Companies Act, 1862, s. 67.**—A clause in articles of association, validating acts done by directors, notwithstanding defects in their appointment or disqualifications, applies to transactions between the company and the shareholders, as well as to transactions between the company and strangers; and calls made by directors, whose appointment is defective, are therefore valid. *Dawson v. African Consolidated Land and Trading Company, Limited*, 77 L.T. 892.

### Contract:—

- (v.) **Q. B. D.—Employment—Contract to Perform every Evening—Not to Perform at any Club—Breach—Singing at Club on Sunday Evening—Meaning of "Perform."**—A music hall artiste by two contracts agreed to perform every evening at certain halls for a certain period in her usual entertainment "as mimic," and by another "as singer and mimic," and bound herself not to perform during her said engagement at (*inter alia*) any club within one mile of the said halls respectively. *Held*, that singing and dancing on one Sunday night at a smoking concert at a private club within the said limit was not a breach of the agreement, that Sunday was not included in the term "engagement," being a *dies non* in such contracts. She had not "performed" within the meaning of the contract, and singing did not include singing before a private audience.—*Kelly v. London Pavilion, New Tivoli, and Oxford*, 77 L.T. 215.
- (vi.) **C. A.—Assignability—Personal Contract—Dissolution of Firm—Novation—Notice to Managing Director of Company—Whether notice to Company.**—A contract of a personal nature between a company and a firm of manufacturers contained a provision that it should continue as long as the company should carry on business in the United Kingdom. On the 1st January, 1898, the firm was dissolved by the retirement of

one of its members, and the remaining partners continued to carry on the business under the same firm name. The company continued to do business with the firm, notwithstanding the change, on the terms of the contract. *Held*, that the contract being personal and not assignable was determinable at the option of the company on the retirement of the said partner, but that, as the company had elected to continue on the same terms, notwithstanding the change, it must be taken to be still subsisting. *Robson v. Drummoud* (2 B. and Ald. 308) applied. *Per Kekewich, J.*—Notice to a managing director, as such, about the business of a company under his management is notice to the company itself.—*Dr. Jaeger's Sanitary Woollen System Co., Limited, v. Walker and Sons*, 77 L.T. 180.

- (i.) **Q. B. D.**—*Licence—Revocation—Breach of Contract—Remedy of Licensee.*—Plaintiff agreed verbally that defendant should let his wall to plaintiff for bill posting at £2 10s. per annum, plaintiff to erect a hoarding on which the bills were to be posted. It was held that although this agreement was only a licence and therefore not being by deed was revocable by the defendant without liability to an action for trespass, yet an action would lie for breach of contract in improperly revoking it. *Wood v. Leadbitter*, 13 M. & W. 838 dist. *Kerrison v. Smith*, L.R. [1897] 2 Q.B. 445; 77 L.T. 344.

### Conveyance:—

- (ii.) **C. D.**—*Land abutting on River—Presumption that River Bed ad medium filum passes—Rebuttal—Inclosure Award Fishery—Death of Party between Trial and Judgment Date of Judgment.* The presumption that a conveyance of land abutting on a river passes the river bed (when belonging to the grantor) *ad medium filum* may be rebutted by evidence of a contrary intention, *e.g.*, the particulars of sale of the land. *Query*, whether the presumption would apply to an award under an Inclosure Act. An award of land abutting on a river made under an Inclosure Act described the land as bounded by the river, and specified the dimensions, which were not sufficient to include half the river bed, and the plan annexed to the award did not include half the bed. The river was not referred to either in the Act or award except as being a boundary of the land, and prior to the Act the lord of the manor owned a several fishery in the river which was not waste of the manor or the subject of commonable rights. *Held*, that the river did not pass by the award. Between trial and judgment in an action one of the defendants died. *Held*, the judgment must be dated as of the last day of the trial.—*Eccroyd v. Coulthard*, L.R. [1897] 2 Ch. 554; 77 L.T. 857.

### Copyright:—

- (iii.) **C. D.**—*Practice—Action on the Case—Detinue Trover Alternatives Remedies—Copyright Act, 1842, ss. 15, 23.* Though the proprietor of a copyright can bring a special action on the case against a wrong-doer under sect. 15 of the Copyright Act, 1842, he can also sue him under sect. 23 of the Act. Under sect. 22 he can sue in detinue for copies detained by the defendant, and in trover for the copies sold by defendant and converted to his own use.—*Muddlock v. Blackwood*, 77 L.T. 493.

### Corporation:—

- (iv.) **Q. B. D.**—*Charters—Fines and Estreated Recognizances—Respective Rights of Crown and Corporation.*—Under charters granted by Henry IV. and Henry VI. to the mayor, bailiffs, and burgesses of the town of Nottingham, the corporation of Nottingham as their successors, were

*held*, to be entitled to all fines received by the sheriff of Nottingham, but not to estreated recognizances; which were not within the terms of the charters but were due to the Crown.—*In re The Mayor, Aldermen, and Burgesses of the Borough of Nottingham*, L.R. [1897] 2 Q.B. 502; 77 L.T. 210.

### County Court:—

- (i.) **Q. B. D.**—*Admission—Taxation of Costs—County Court Rules, 1889—O. ix., rr. 4-5.*—The admission referred to in O. ix., rr. 4-5, of the County Court Rules, 1889, must be a clear one and such as to dispense with any proof on the part of the plaintiff in order to deprive him, if successful, of the costs of the hearing at the trial.—*Pincott v. Letts*, 77 L.T. 160.

### Criminal Law:—

- (ii.) **Q. B. D.**—*Larceny by Bailee—Fraudulent Appropriation of Money Authorised to be raised on Bond—Larceny Act, 1861, s. 3.*—Fraudulent appropriation of money raised on a bond by a person authorised so to raise it amounts to larceny by a bailee within sect. 3 of the Larceny Act, 1861. *Reg. v. De Banks*, 50 L.T. Rep. 427, followed.—*Reg. v. The Governor of Holloway Prison; c. p. Emile George*, 77 L.T. 247.
- (iii.) **P. C.**—*Marital Control—Wife Aiding Husband in Committing Crime.*—Coverture does not in itself raise any presumption of compulsion by the husband. Upon evidence that a wife voluntarily assisted her husband in the commission of an offence, it was *held* that she was rightly convicted.—*Brown v. Attorney-General for New Zealand*, 77 L.T. 414.

### Crown:—

- (iv.) **C. D.**—*Prerogative—Action against Lords of Admiralty—Sued in Official Capacity—Leave to Amend.*—The Court has no jurisdiction to entertain an action of trespass brought against the Lords of the Admiralty in their official capacity, and where an action was so brought it was *held* that leave to amend by suing the defendants individually as well as in their official capacity and by adding the names of persons who had actually committed the alleged trespass, ought not to be given to the plaintiffs, as it would be changing one action into another of a substantially different character.—*Raleigh v. Goschen*, 77 L.T. 420.

### Dairies and Cowsheds:—

- (v.) **Q. B. D.**—*Ventilation—Air Space—Order in Council—"As if enacted by this Act"—Contagious Diseases (Animals) Act, 1878, ss. 34, 58—Dairies, Cowsheds, and Milkshops Order, 1885, Arts. 7, 8, and 13.*—An Order of the Privy Council regulating "ventilation including air space," in dairies and cowsheds is not inconsistent with sect. 34 (2) of the Contagious Diseases (Animals) Act, 1878. By the Dairies, Cowsheds, and Milkshops Order, 1885, Art. 13, the Privy Council, pursuant to sect. 84 (5) of the same Act, delegated its power to make (*inter alia*) regulations as to "ventilation" of cowsheds and dairies to a local authority. By Arts. 7 and 8 the Privy Council itself prescribed certain regulations as to "ventilation including air space," of cowsheds and dairies. The local authority prescribed, under Art. 13, certain regulations as to air space in cowsheds. *Held*, that these regulations were within the powers delegated under Art. 13. Orders made under an Act of Parliament, which are to have effect "as if enacted in this Act," are to be read with the Act itself as one statute.—*Baker v. Williams*, 77 L.T. 495.

**Divorce:—**

- (i.) **C. A.**—*Practice—Motion to Rehear Cause Tried by Judge Alone—Proper Court—Divorce Rules, r. 62—Supreme Court of Judicature Act, 1890, s. 1.*—A motion for rehearing a divorce cause tried by a judge alone should be made to a Divisional Court of the Probate, Divorce and Admiralty Division, and not to the Court of Appeal. Rule 62 of the Divorce Rules is not affected by Supreme Court of Judicature Act, 1890, s. 1.—*Smith v. Smith, L.R. [1897] P. 293; 77 L.T. 206.*
- (ii.) **P. D.**—*Practice—Restitution of Conjugal Rights—Application for Alimony Pendente Lite—Discretion of Registrar as to Ordering Further Answer or Attendance for Cross-examination—Matrimonial Causes Act, 1857, s. 23—Divorce Rules, rr. 86, 191.*—The registrar is not bound to make an order under rules 86 and 191 of the Divorce Rules for a further and better answer by a husband to his wife's application for alimony pendente lite, or an attendance by him for cross-examination on his answer. The registrar has a discretion which he must exercise; but the Court will not interfere with such exercise unless he has proceeded upon a wrong principle or has exercised his discretion wrongly.—*Sykes v. Sykes, L.R. [1897] P. 306; 77 L.T. 150.*
- (iii.) **P. D.**—*Costs—Knowledge of Co-Respondent.*—A co-respondent commenced adulterous intercourse with the respondent, not knowing her to be a married woman, but he continued it after he had reason to believe that she was married. Held, that costs could not be ordered against him.—*Newby v. Newby and White, 77 L.T. 142.*
- (iv.) **H. L.**—*Divorce Bill—Definitive Decree of Divorce—Action for Crim. Con.—Domiciled Irishman Jurisdiction of English Court—Evidence taken in India.*—A petition for divorce should with great caution be allowed to proceed in the English Divorce Court, where there is ground for supposing that the parties are domiciled out of the jurisdiction. A definitive sentence of divorce *a mensa et thoro* need not have been pronounced in the Irish Courts before the first reading of an Irish divorce bill. The House of Lords may allow the bill for divorce to be received, though no action for crim. con. has been brought against a co-respondent who was not domiciled and could not be served in Ireland. Where a warrant of the House of Lords to take evidence in India cannot be enforced, the evidence as taken and used in a previous suit in the English Divorce Court may be allowed to be used *quantum valeat*.—*Sinclair's Divorce Bill, L.R. [1897] A.C. 469.*
- (v.) **P. D.**—*Maintenance—Order on husband to secure Annual Sum for Wife—Power of Wife to Release—Matrimonial Causes Act, 1857, s. 32.*—Where a decree for dissolution of marriage has been made, and the husband has been ordered under sect. 32 of the Matrimonial Causes Act, 1857, to secure an annual sum to the wife for permanent maintenance, payable monthly, she can release or alienate it. A subsequent agreement to take a gross sum in lieu of the monthly payments is good.—*Maclurean v. Maclurean, 77 L.T. 474.*
- (vi.) **P. D.**—*Practice—Leave to Proceed Without Co-respondent—Discretion of Court—Matrimonial Causes Act, 1857, s. 23.*—A petitioner may be allowed to proceed with a petition without joining an accused person as co-respondent where the Court is satisfied that no evidence can be obtained against him.—*Edwards v. Edwards and Wilson, L.R. [1897] P. 316; 77 L.T. 406.*
- (vii.) **P. D.**—*Practice—Wife's Costs—Death of Husband on Eve of Trial—Order Against Executors.*—A husband respondent died on the eve of trial. An order for wife's costs limited to amount lodged in Court, was afterwards made against husband's executors with leave to them to attend the taxation.—*Cunningham v. Cunningham, 77 L.T. 405.*

**Dog:—**

- (i.) **Q. B. D.**—*Injury to Cattle whilst Trespassing—Liability of Owner of Dog*—*Dogs Act, 1865, s. 1.*—The owner of a dog is liable for injury done by it to sheep, though they were trespassing on his land at the time.—*Grange v. Silcock*, 77 L.T. 340.

**Easement:—**

- (ii.) **H. L.**—*Opening Sluices—Incidental Benefit to other Lands besides Dominant Tenement—Prescription.*—The corporation of G., as owners of certain lands had for over 200 years opened as of right the gates of sluices belonging to the appellant upon the river Ouse in time of flood in order to prevent damage to those lands. *Held*, a good easement, even though the exercise of it benefited lands belonging to other persons, and the corporation could maintain their right either by lost grant or prescription.—*Simpson v. Mayor, &c., of Goulmanchester*, L.R. [1897] A.C. 696; 77 L.T. 409.

**Ecclesiastical Law:—**

- (iii.) **O. A.**—*Clergy Discipline—Trial in Consistory Court—Sentence of Deprivation—Jurisdiction of Bishop to pass subsequent Sentence of Deposition* *Clergy Discipline Act, 1892, s. 8.*—After sentence of deprivation has been passed upon a clergyman found guilty on trial in the Consistory Court under the *Clergy Discipline Act, 1892*, the bishop of the diocese may proceed to pass sentence of deposition upon him under sect. 8 of the said Act at any subsequent time.—*Reg. v. Bishop of Durham*, L.R. [1897] 2 Q.B. 414; 77 L.T. 190.

**Escrow:—**

- (iv.) **O. A.**—*Delivery to Solicitor for all Parties—Solicitor one of Grantees—Mortgage—Equitable Right to Set Aside—Misappropriation of Money by Solicitor and Banker.* A deed may be delivered as an escrow, though to one of the parties to it. Where there are several grantees, and one is solicitor of the grantor and also of the other grantees, and the deed is delivered to him, evidence is admissible to shew in what character and upon what terms the deed was delivered, and whether as an escrow or not. Where a company enabled their managers and bankers to represent to mortgagees that their money was invested on the security of property belonging to the company, *held*, the company had no equitable right to have the deed set aside on the ground that they never received the money in consideration of which it was executed.—*The London Freehold and Leasehold Property Company, Limited, v. Baron Suffield*, L.R. [1897] 2 Ch. 608; 77 L.T. 445.

**Evidence:—**

- (v.) **P. C.**—*Written Agreement—Parol Evidence—Admissibility.*—Parol evidence is admissible when it relates to the circumstances under which the plaintiff's name was appended to a document forming no part of a written agreement, but placed before him for signature by the defendant after the agreement was concluded.—*Bank of Australasia v. Palmer*, L.R. [1897] A.C. 540.
- (vi.) **O. A.**—*Inspection of Banker's Books—Account of Person not Party to Action—Bankers Books Evidence Act, 1879, s. 7.*—The Court will not generally make an order under sect. 7 of the *Bankers Books Evidence Act, 1879*, for inspection of the banking account of a person not party to and having no interest in the litigation in which the inspection is sought.—*Pollock v. Garte*, 77 L.T. 415.

**False Pretences:—**

- (i.) **C. O. R.**—*Obtaining Goods by False Pretences—Obtaining Credit by Fraud—Larceny—24 & 25 Vict., c. 96, s. 88—Debtors Act, 1869, s. 13.*—A person cannot be convicted of the offence of obtaining goods by false pretences unless he has made some misrepresentation either by word or conduct. It is not sufficient for a conviction under sect. 88 of 24 & 25 Vict., c. 96, to show that the prisoner obtained goods from an intending vendor, not having the means to pay for them and intending to defraud the owner, but without making any representation either as to his ability or intention. Nor can there be a conviction for larceny as the owner intended to part with the property on the goods; but the prisoner may be convicted for obtaining credit by fraud under sect. 13 of the Debtors Act, 1869. A vendor who delivers goods on the terms that they are to be paid for immediately after they have been received gives credit to the purchaser.—*Reg. v. William Jones*, 77 L.T. 503.

**Fixtures:—**

- (ii.) **C. A.**—*Collection of Stuffed Birds—Settled Mansion House—Movable Chattels in Fixed Cases—Annexation to Freehold.*—Decision of Court of Appeal (22, 97, iv.) affirmed.—*Viscount Hill v. Bullock*, L.R. [1897] 2 Ch. 482; 77 L.T. 240.

**Friendly Society:—**

- (iii.) **Q. B. D.**—*Alteration of Rules. Rule giving power of Alteration—Subsequent Alteration of Rules—Effect of on Members' Vested Rights.* A rule made by a friendly society under the power given by sect. 27 of the Friendly Societies Act, 1855, was to the effect that no new rule should be made or any rule altered except with the consent of a majority of members present at a general meeting. Held, that this rule continued in force notwithstanding the repeal in 1875 of the statute under which it was made, that it preserved to the society the right to alter their rules, and that members who joined the society when such rule was in force were bound by future alterations of the rules duly made thereunder. *Smith v. Galloway*, 77 L.T. 469.

**Highways:—**

- (iv.) **H. L.**—*Highways—Extraordinary Traffic—Person by whose Order Conducted—Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict., c. 77), s. 23.*—Decision of Court of Appeal (22, 64, vi.) affirmed.—*Kent County Council v. Lord Gerard*, L.R. [1897] A.C. 683; 77 L.T. 109.
- (v.) **Q. B. D.**—*Bicycle Riding on Highway at Night without Light—Power of Police Officer to Arrest Offender—Assault—Highway Act, 1835, ss. 78, 79—Local Government Act, 1888, s. 85.*—A constable has no right to arrest a person riding a bicycle on the highway at night without a lighted lamp, as required by the regulations contained in sect. 85 of the Local Government Act, 1888. That section does not incorporate the power of arrest without warrant contained in sects. 78, 79, of the Highway Act, 1835. A constable, who forcibly stops a bicyclist for not having a light, is guilty of assault.—*Hatton v. Treeby*, L.R. [1897] 2 Q.B. 452; 77 L.T. 309.
- (vi.) **Q. B. D.**—*Locomotive—"User" on Highway—Locomotive Passing from one Locality to Another—Licence—Bye-Laws—Highways and Locomotives (Amendment) Act, 1878, s. 32.*—The owner of a locomotive passing along a highway from one locality to another, not having a licence from the county authority as provided by its bye-laws, is liable to be fined under

sect. 82 of the Highways and Locomotives Act, 1878, for "using" the highway without having such a licence.—*London County Council v. Wood*, L.R. [1897] 2 Q.B. 482; 77 L.T. 312.

### Husband and Wife:—

- (i.) **H. L.**—*Judicial Separation—Legal Cruelty—What Constitutes—Unfounded Abominable Charge.*—Matrimonial conduct to amount to legal cruelty must be such as to have caused danger, or reasonable apprehension of danger to life, limb, or health, bodily or mental. Where a wife living apart from her husband persisted *mala fide* in making an unfounded abominable charge against the husband, it was held that this did not amount to legal cruelty sufficient to support a petition for judicial separation.—*Russell v. Russell*, L.R. [1897] A.C. 395; 77 L.T. 249.
- (ii.) **C. A.**—*Separation Deed—Covenant not to Molest—Breach—Divorce Proceedings in Foreign Country.* The mere taking of divorce proceedings in a foreign country without proof of intention to annoy, does not amount to molestation within the meaning of a covenant not to molest in a separation deed made between British subjects domiciled in the United Kingdom. Decision of Court below (23, 8, i.) reversed.—*Hunt v. Hunt*, 77 L.T. 421.

### Justices:—

- (iii.) **Q. B. D.**—*Disqualification—Bias—Interest—Prosecution by Council of Incorporated Law Society—Ordinary Member of Society sitting as Magistrate—Attorneys and Solicitors Act, 1874, s. 12.*—An ordinary member of the Incorporated Law Society is not, as such, disqualified from adjudicating as a magistrate upon a summons under the Attorneys and Solicitors Act, 1874, against a person for falsely pretending to be a solicitor. Such circumstances do not shew a probability of bias on the part of the magistrate, either as having a pecuniary interest in the proceedings or as prosecutor, for ordinary members of the Society have no voice in the institution of proceedings, which rests entirely with the Council. *Reg. v. Burton and Another, Justices*; *s. p. Young*, L.R. [1897] 2 Q.B. 468; 77 L.T. 364.
- (iv.) **Q. B. D.**—*Vaccination Act, 1867—Costs of Order—Imprisonment in Default of Payment—Summary Jurisdiction Acts, 1849, s. 18; 1879, s. 6.*—An order made by justices on summons under sect. 31 of the Vaccination Act, 1867, directing a person to have his child vaccinated within a certain time, and that he should pay the costs of the order, and on failure to do so that there should be distress, with imprisonment in default of distress, is good under sect. 18 of the Summary Jurisdiction Act, 1849. This section is not repealed by sect. 6 of the Summary Jurisdiction Act, 1879, except so far as it gives jurisdiction to enforce orders for payment of money by distress and imprisonment.—*Reg. v. Burrows and Another, Justices*; *s. p. Wilson*, 77 L.T. 338.

### Landlord and Tenant:—

- (v.) **C. A.**—*Market Garden—Contract of Tenancy—Yearly Tenancy—Agricultural Holdings Act, 1883, s. 61—Market Gardener's Compensation Act, 1893, s. 1, 4.*—A written agreement whereby the landlord let, and the tenant hired, a piece of market garden ground, at the rent of £6, payable quarterly on the four usual quarterly days for payment of rent in every year, with a proviso that the tenancy might be determined by either party giving to the other three calendar months notice to quit on any day of the year, was held to be a letting from year to year and a "contract of tenancy" within the meaning of the Agricultural Holdings Act, 1883, and the Market Gardener's Compensation Act, 1893.—*King v. Eversfield*, L.R. [1897] 2 Q.B. 475; 77 L.T. 195.

- (i.) **Q. B. D.**—*Compensation for Improvements—Notice—Determination of Tenancy—Agricultural Holdings Act, 1883, s. 7.*—Where an agricultural holding consisted of buildings and land, which were to be given up at different times, the tenant gave the statutory notice to claim compensation two months before the buildings were to be given up, but was out of time with regard to the land. *Held*, that the tenure of the buildings did not constitute a holding within the meaning of the Agricultural Holdings Act, 1883, and that the notice was bad. *In re Paul; c. p. The Earl of Portarlington*, 61 L.T. 835 dist.—*Morley v. Carter*, 77 L.T. 837.

### Licensing Acts:—

- (ii.) **H. L.**—*Meeting of Licensing Justices—Not a Court of Summary Jurisdiction—Appeal from Decision—Power to Give Costs—Summary Jurisdiction Act, 1879, s. 31, sub-s. 5.*—Justices at a licensing meeting are not a Court of Summary Jurisdiction: a refusal to renew a licence is not a "conviction or order;" and on appeal to Quarter Sessions against their decision the latter Court has no power to give costs under sect. 31, sub-sect. (5) of the Summary Jurisdiction Act, 1879. Per Lord Herschell. — Persons objecting to the grant of a licence are not parties to the proceedings on the application. — *Boulter v. Justices of Kent*, L.R. [1897] A.C. 556; 77 L.T. 288.
- (iii.) **Q. B. D.**—*Closing Hour—Theatre—Exemption—Licensing Act, 1872, s. 72—Licensing Act, 1874, s. 3.*—The exemption contained in sect. 72 of the Licensing Act, 1872, in favour of (1) theatre proprietors, only means that such proprietors need not obtain a justices' licence, but is to be read as subject to the provisions in the Licensing Act, 1874, sect. 3, as to the hours of closing. — *Gallagher v. Rudd*, 77 L.T. 807.

### Local Government:—

- (iv.) **Q. B. D.**—*Power of Rural Sanitary Authority to make Bye-Laws—Cesspools in Connection with Buildings—Old Buildings—Public Health Act, 1875, s. 157—Public Health Act Amendment Act, 1890, s. 23.*—A bye-law of a sanitary authority, providing that every person who should construct a cesspool in connection with a building should construct it at a distance of fifty feet at least from a dwelling house, *held* not to be unreasonable, merely because it was impossible to construct a cesspool at the prescribed distance. The power of a rural sanitary authority under sect. 157 of the Public Health Act, 1875, and sect. 23 of the Public Health Acts Amendment Act, 1890, to make bye-laws as to cesspools connected with buildings, extends to old buildings existing before making the bye-laws as well as to new buildings. — *Simmons v. Malling Rural District Council*, L.R. [1897] 2 Q.B. 433; 77 L.T. 841.
- (v.) **Q. B. D.**—*Tithe Map—Custody—Order of County Council—Power of Justices to Enforce—Tithe Act, 1860, s. 28—Local Government Act, 1894, s. 17 (8).*—A county council made an order, under sect. 17 (8) of the Local Government Act, 1894, that a tithe apportionment and map of a certain parish should be placed in such custody as the parish council should direct. The rector of the parish, in whose custody they were, declined to comply with the order. *Held*, that justices had power, under sect. 28 of the Tithe Act, 1860, to make an order that these documents should be moved from the custody of the rector and deposited in that of the parish council.—*Lewis (appellant) v. Poole (respondent)*, 77 L.T. 869.
- (vi.) **C. A.**—*Urban Authority—Contract Under Seal—Alterations not Under Seal—Agreement not Under Seal to Compromise Claims—Public Health Act, 1875, ss. 173, 174.*—Under a contract made by an urban authority



with a contractor, and sealed with the common seal of the authority pursuant to sects. 173, 174 of the Public Health Act, 1875, and containing the usual clause empowering the engineer to make alterations, these may be made without requiring the sanction of the common seal of the authority. An agreement between an urban authority and a contractor compromising all claims by him against the authority is not a contract within sect. 173 necessary for carrying the Act into execution and need not be sealed with the common seal of the authority.—*Williams v. Harmouth Urban District Council*, 77 L.T. 883.

- (1.) **Q. B. D.**—*London County Council—Betterment—Valuation—Licensed Premises Takings and Payments—Tying Covenants*—*London County Council (Tower Bridge Southern Approach) Act, 1895, s. 30.*—In valuing properties under the betterment clauses of the London County Council (Tower Bridge Southern Approach) Act, 1895, the valuer was to assess (1) the site, (2) the site and buildings, (3) the separate value of the owner and every lessee having a term of not less than 21 years to run at the date of the valuation excluding any trade interest. In making such valuation with regard to licensed premises it was held that as to (1) neither takings nor payments, nor the tying covenants were elements to be considered; as to (2), that the rule was the same as to takings and payments when considering the site and buildings, but as to the tying covenant the valuation must be the same whether the cost be considered or not, as it would only affect the apportionment between lessor and lessee; and as to (3), the fact that the house is tied ought to be considered. *In re An Arbitration between London County Council and City of London Brewery Company*, 77 L.T. 463.
- (ii.) **O. A.**—"Streets" Charge for Paving, Sewering, and Metalling Trespass Arbitration—*West Hartlepool Extension and Improvement Act, 1870.*—In 1878 commissioners under a local Act, the material provisions of which were substantially the same as those of the Public Health Act, 1875, entered into an agreement with defendant by which he was, on completion of certain roads, to throw 18 feet of his land into them so as to increase the width to 36 feet (which was done) but not to make the roads. In 1887 the powers of the Commissioners passed to the plaintiffs' corporation. In 1892 the corporation ordered the defendant to sewer, drain, level, flag, and metal the 18 feet width not on his land so far as his premises abutted thereon. The defendant had sewered and paved the 18 feet of his own land and declined to comply with the order, whereupon the corporation did the work and sought to make the expense chargeable on his property. Held, that half of each of the roads was a "street" within the meaning of the Act, and that the corporation were entitled to sewer and pave it compulsorily at the expense of the adjoining owners in case they refused to comply with a proper notice to do it; that the notice was good, and entry under the order on lands was justifiable and not an act of trespass. The defendant not contending that there was any wrong apportionment there arose no question for an arbitrator to decide. *Handgate District Board v. Keene* (1892) 1 Q.B. 831 considered.—*Mayor, &c., of West Hartlepool v. Robinson*, 77 L.T. 287.
- (iii.) **O. D.**—*Sewering—Satisfaction of Local Authority—Frontages—Expenses*—*Public Health Act, 1875, s. 150.*—The mere existence of private sewers does not constitute a sewerage of the street as a whole under the Public Health Act, 1875; still less a sewerage "to the satisfaction of the local authority" within sect. 150 of the Act.—*Handsworth Local Board v. Taylor*, L.R. [1897] 2 Ch. 442, n.
- (iv.) **O. D.**—*Sewering—Private Sewers—"Satisfaction" of Local Authority—Notice to Frontagers—Insufficient Service—Recovery of Expenses—Arbitration—Finality of Award.*—The existence of sewers under a street

for the independent drainage of particular houses and the fact that the street is vested in the local authority are not sufficient to shew that the street has been sewered as a whole—still less that it has been sewered “to the satisfaction of the urban authority” within sect. 150 of the Public Health Act, 1875, when notices to sewer have been given by them and proceedings taken under that section. Notice under sect. 150 to frontagers must be served on all the frontagers, but where the question of the apportioned expenses of sewerage has been referred to arbitration objections as to insufficiency of notices must be taken before the arbitrators, and it is too late to take them in an action to enforce the award.—*Handsworth Urban District Council v. Derrington*, L.R. [1897] 2 Ch. 438.

- (i.) **Q. B. D.**—*Borough Rates—Costs of Quarter and Petty Sessions—Population under 10,000. Municipal Corporations Act, 1882, s. 160—Local Government Act, 1888, ss. 35, 38, 68, 84.* Where the population of a borough does not exceed 10,000, the expenses of borough quarter sessions, including salaries of recorder and clerk of the peace, must be borne by the borough and not by the county council. The salary of the clerk of the borough justices must be paid by the county council. —*The Mayor, &c. of Thetford v. The Norfolk County Council*, 77 L.T. 498.

### Lunacy:—

- (ii.) **L. J. J. in Lun.**—*Appointment of Committee of Property out of Jurisdiction—Security.*—In the case of a lunatic (a widow), so found by inquisition, with property situate abroad, the Court appointed her eldest son resident abroad and her daughter resident in England joint committees of her estate, accepting as sufficient security the bond of the committees and of their brothers and sisters, without requiring them to justify, and authorising the committees to sell or concur in selling the estate. —*In re Hopper (a Lunatic)*, 77 L.T. 154.

### Mandamus:—

- (iii.) **Q. B. D.**—*Service of Summonses Procedure London Building Act, 1894, s. 188 (1). Summary Jurisdiction Act, 1848, s. 1.* The procedure for service, under sect. 188 (1) of the London Building Act, 1894, is only available where, after ordinary enquiry, the person cannot be found or identified. Otherwise, the summons should be served according to sect. 1 of the Summary Jurisdiction Act, 1848. —*Reg. v. Mead; c. p. London County Council*, 77 L.T. 462.

### Marine Insurance:—

- (iv.) **Q. B. D.**—*Policy—Damaged Cotton “on Deck”. Concealment.*—Instructions were given to a broker to re-insure a cargo of damaged cotton “on deck” to the amount of £7,500. The broker did not inform the underwriter that the cotton was damaged. Held, that the instructions being to insure such a quantity “on deck” shewed that it was damaged cotton and under the circumstances there was no concealment. There was no duty on the broker to say that the cotton was damaged. —*The British and Foreign Marine Insurance Co., Limited, v. Sturge*, 77 L.T. 208.
- (v.) **H. L.**—*Loss of Freight—Exception—“Claim Consequent on Loss of Time”—Loss of Time Arising from Peril of the Sea.*—Decision of Court of Appeal (22, 45, iv.) affirmed. —*Bonsaude and Others v. The Thames and Mersey Marine Insurance Company, Limited*, L.R. [1897] A.C. 609; 77 L.T. 282.

- (i.) **Q. B. D.**—*Repairs of Damage Insured Against—Ship in Dry Dock—Survey for Reclassification while in Dock—Apportionment of Expense of Docking between Shipowner and Underwriters.*—A ship being in dry dock for purposes of repairs, for which underwriters were liable, was surveyed by instructions of the owner for the purpose of reclassification, though the time for survey had not yet arrived. *Held*, that the expenses of dry docking should be borne in equal shares by the shipowner and the underwriters.—*The Ruabon Steam Ship Company, Limited, v. London Assurance Corporation, L.R. [1897] 2 Q.B. 456; 77 L.T. 402.*

### Married Woman:—

- (ii.) **C. A.**—*Judgment against—Separate Estate—Restraint on Anticipation—Arrears of Income due at date of Judgment—Leave to enter Judgment—Judgment entered after Income due—Appointment of Receiver.*—Where a plaintiff obtained leave under O. xiv. to enter judgment against a married woman with separate estate, subject to a restraint on anticipation, but delayed entering judgment until a time when he knew arrears of income had just become due, and then applied for a receiver, *held*, a receiver ought not to be appointed under such circumstances. *Colyer and Another v. Isaacs, 77 L.T. 198.*
- (iii.) **C. A.**—*Judgment Against—Separate Estate with Restraint on Anticipation—Re-Marriage—Revival of Restraint—Appointment of Receiver.*—A restraint upon anticipation of a married woman's separate estate revives on her re-marriage. Where a married woman, whose interest under a settlement was subject to a restraint on anticipation, was divorced from her first husband and married again and was then sued as a married woman, it was *held* that no order for a receiver of her interest under the settlement could be made.—*Stroud v. Edwards, 77 L.T. 280.*
- (iv.) **C. D.**—*Separate Estate—Restraint on Anticipation—Removal by Order of Court for payment of Husband's Debts—Indemnity—Conveyancing Act, 1881, s. 39.* Where the restraint on anticipation on a wife's life interest has been removed by order of the Court in order to make it available for raising money to pay her husband's debts, she has no right to indemnity against him or his estate, not reserved by the order.—*Paget v. Paget, 77 L.T. 491.*

### Master and Servant:—

- (v.) **Q. B. D.**—*Apprentice—Otherwise Employed with Master's Consent—"Duly and Truly" Serve.* An apprentice who is employed, with his master's consent, otherwise than actually by him during the term of the apprenticeship "duly and truly" serves his master.—*Richardson v. The Colne Fishery Company, 77 L.T. 501.*

### Matrimonial Suit:—

- (vi.) **P. D.**—*Compromise—Terms Signed—Application to stay proceedings and to make terms a Rule of Court.*—In an undefended suit for judicial separation, where terms were signed before the case came into the list, the parties agreeing to an order staying proceedings upon the said terms, except for the purpose of carrying them out and enforcing them, it was *held* that the Court had jurisdiction when the case came on for hearing to stay proceedings and to order that the terms be made a rule of Court. *Graves v. Graves, 69 L.T. 420, distinguished.—Howard v. Howard, 77 L.T. 140.*

**Merchant Shipping:—**

- (i.) **Q. B. D.** *Advance Note for Wages to Seamen—Condition—Non-fulfilment—Assignee—Payment by Owners' Agent—Liability of Owner.*—An advance note for wages given to a seaman payable five days after the sailing of the ship had on it the words "provided he sails in the said ship and is duly earning his wages according to his agreement." The note was presented for acceptance as required to the owners' agents, who accepted it. It was then indorsed by the seaman to a *bona fide* holder, who was paid by the agents, notwithstanding that they had meanwhile been notified by the captain of the ship that the seaman had been discharged, and directed not to pay the note, as the condition that the sailor should be earning wages five days after the ship had sailed had not been fulfilled. In an action by the agents against the owners to recover the amount as paid on their behalf. *Held*, neither the agents nor the owners were liable on the note, the condition not having been fulfilled. - *Bellamy & Co. (respondents) v. Lunn & Co. (appellants)*, 77 L.T. 396.

**Metropolis:—**

- (ii.) **Q. B. D.** *Street—New Buildings—Forecourt or Space—Distance from Centre of Roadway—London Building Act, 1894, ss. 13, 14, 200 (2).*—The respondents had erected a new building, of which the external walls were not less than the prescribed distance from the centre of the roadway. When this building was erected, and for probably thirty years before that, there had existed a boundary wall of a garden between the building and the street, and this was left standing and enclosed by iron railings. *Held*, that no offence was committed by the respondents under sects. 13, 14, 200 (2) of the London Building Act, 1894. - *London County Council v. Aylestury Dairy Company*, 77 L.T. 440.
- (iii.) **Q. B. D.** *London Building Act, 1894—Saving of Existing Liabilities—Limit of Term for Proceedings—Summary Jurisdiction Act, 1848, s. 11.*—Although liabilities actually incurred on or before the 1st January, 1895, are saved by sect. 215 of the London Building Act, 1894, yet proceedings in respect of them are subject to the limitation of time contained in sect. 11 of the Summary Jurisdiction Act, 1848. - *Reg. v. Cluer*; *e. p. London County Council*, 77 L.T. 439.

**Mine:—**

- (iv.) **Q. B. D.** *Metalliferous Mine—Abandoned—Duty to Fence—Person Interested in Minerals—Metalliferous Mines Regulation Act, 1872, s. 13.*—By the mining customs of the county, as recognised by the Mining Customs and Mineral Courts Act, 1852, the public were entitled to work a certain mine on paying a royalty to the Crown on all lead ore extracted. There were other minerals in the mine which had to be raised in order to get the lead ore; these, when separated, went by the custom to the owner of the mine. The mine being abandoned, it was *held*, that the duty to fence it under the Metalliferous Mines Regulation Act, 1872, devolved on the owner, as he was interested in the minerals both before extraction, while they were part of his freehold, and after extraction, by the custom. - *Stokes v. Arkwright*, 77 L.T. 400.

**Partition:—**

- (v.) **C. D.** *Tenancy in Common—Possession of Entirety by One Co-Owner—Occupation Rent—Whether Chargeable as against Mortgagee of Share of such Co-Owner*—4 *Anne*, c. 3, s. 27.—A tenant in common of land who has been in occupation of the entirety, though not as tenant or bailiff of his co-owner, is not liable at law to pay anything to his co-owner,

nor does the statute 4 Anne, c. 8, apply. Although, therefore, it is usual in partition actions to direct an enquiry as to what sum is due from such an occupying co-owner as occupation rent, yet any sum found to be so due cannot be set off against a legal mortgagee of such co-owner's share. *Query*, whether an equitable mortgagee stands in any different position.—*Hill v. Hickin*, L.R. [1897] 2 Ch. 579; 77 L.T. 127.

### Partnership:—

- (i.) **C. A.**—*Dissolution—Previous Retainer of Solicitor to Conduct Action—Retirement of Dormant Partners—Liability for Costs Subsequently Incurred—Partnership Act, 1890, s. 17, sub-s. 2; s. 36, sub-s. 3.*—A retainer of a solicitor to conduct an action is one entire contract to conduct it to the end. Where a solicitor was retained by the managing partner of a firm consisting of himself and two dormant partners to conduct an action for the firm, the retirement of the dormant partners while the action was pending without notice to the solicitor was held not to relieve them from liability for costs incurred subsequent to their retirement.—*Court v. Berlin and Others*, 77 L.T. 293.

### Patent:—

- (ii.) **C. A.**—*Amendment of Specification by Way of Disclaimer—Discretion of Court or a Judge—Patents, &c., Act, 1883, ss. 19, 26 (4) (e)—Stay of Proceedings Pending Appeal—Patent Rules, 1890, r. 74.*—The Court of Appeal will not interfere with the discretion given to the Court or a Judge by sect. 19 of the Patents, &c., Act, 1883, as to granting liberty to a patentee to apply for leave to amend his specification by disclaimer, unless it is clearly of opinion that the discretion was exercised on a wrong principle. Sect. 74 of the Patent Rules, 1890, does not deprive the Court of its jurisdiction to stay execution and cancellation pending appeal on petition for revocation.—*Yates v. Armstrong; in re Armstrong's Patent*, 77 L.T. 267.

### Petition:—

- (iii.) **C. D.**—*Charity—Mortgage of Real Estate Belonging to—Sanction of Court—Service of Petition—Lord Romilly's Act (52 Geo. III., c. 101).*—The Court may sanction a scheme providing for the mortgage of real estate belonging to a charity. A petition under Lord Romilly's Act for the sanction of the Court to a scheme of sale of real estate of a charity and re-purchase need not be served on the Attorney-General, but the trustees of the charity other than the petitioning trustees should be respondent to the petition.—*In re The Stockport Ragged Industrial and Reformatory School*, 77 L.T. 425.

### Poor Law:—

- (iv.) **H. L.**—*Loans to Guardians for Fixed Terms—Redemption without consent of Lender—Poor Law Loans Act, 1871, s. 2.*—Decision of Court of Appeal (22, 71, iv.) affirmed.—*Guardians of West Derby Union v. Metropolitan Life Assurance Society*, L.R. [1897] A.C. 647; 77 L.T. 284.
- (v.) **Q. B. D.**—*Order of Removal—Settlement—Division of Parish into Separate Parishes—Loss of Settlement—Local Government Act, 1894, s. 1, sub-s. 3.*—Where a parish, which is partly within and partly without a rural sanitary district, is divided into separate parishes under sect. 1 (3) of the Local Government Act, 1894, a settlement acquired in the undivided parish before the division is extinguished, and a person does not by such previous settlement acquire a settlement in either of the separate parishes.—*St. Saviour's Union (appellants) v. Dorking Union (respondents)*, 77 L.T. 466.

**Practice :—**

- (i.) **C. A.—Action in Chancery Division—Counterclaim for Libel—Striking Out—Foreign Government—***O. xix., r. 27—O. xxi., r. 15.*—In an action by a foreign government in the Chancery Division for the appointment of a new trustee of a fund, the defendants pleaded that the fund was not a trust fund, and counterclaimed damages for alleged libel contained in a letter referring to the conduct of the defendants in the matter. *Held*, the counterclaim was properly ordered to be struck out, and it made no difference that the plaintiffs were a foreign government and could not be sued in this country.—*The South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord*, L.R. [1897] 2 Ch. 487; 77 L.T. 241.
- (ii.) **H. L.—Discovery—Penal Proceedings—Statutory Offence—Penalty Imposed for Disobedience to Order—Rivers Pollution Prevention Act, 1876, 39 & 40 Vict., c. 75, ss. 3, 10.**—Decision of Court of Appeal (22, 28, v.) affirmed.—*Derby (Mayor and Corporation of) v. Derbyshire County Council*, L.R. [1897] A.C. 550; 77 L.T. 107.
- (iii.) **Q. B. D.—Action for Cancelling Allotment of Shares—No appearance—No defence—Application to Sign Judgment—Evidence—***O. xix., r. 10; O. xxvii., r. 11.*—On application to sign judgment in default of defence in an action for cancelling an allotment of shares; where there is no appearance, under *O. xxvii., r. 11*, it is not necessary to file any evidence.—*Webster & Co., Limited, v. Vincent*, 77 L.T. 167.
- (iv.) **C. A.—Discovery—Information—Right of Crown—Crown Suits Act, 1865, ss. 13, 16—Rules of Court as to Practice in English Informations (Easter Term, 1866), rr. 4 (1), 5 (5).**—The Crown has the same right to discovery against a subject as one subject has against another in an ordinary action, and in an information the Crown's right to discovery is not lost because the answer is not excepted to within six weeks. In an information by the Crown against the conservators of a river claiming part of the foreshore and bed the defendants claimed to be owners of the whole of the foreshore and bed within the limits of the port. *Held*, the Crown was entitled to inspection, as well of the documents relating to the parts claimed by it, as of all those relating to acts of ownership by defendants within the limits of the port, including their acts as conservators.—*Attorney-General v. Mayor, &c., of Newcastle-upon-Tyne*, L.R. [1897] 2 Q.B. 384; 77 L.T. 203.
- (v.) **C. A.—Interpleader—Seizure Under Execution—Claim by Bill of Sale Holder—Order for Sale—Jurisdiction—***O. lvii., r. 12—Bankruptcy Act, 1890, s. 11.*—The jurisdiction conferred by *O. lvii., r. 12*, ought not to be exercised against the grantee of a bill of sale unless there is reasonable ground for holding that the sale will produce more than sufficient to answer the just claims of the grantee so as to have a surplus available for the execution creditor. *Semble*, an execution is only put an end to by sect. 11 of the Bankruptcy Act, 1890, at the option of the trustee in bankruptcy, and if the trustee instead of asserting his rights supports the execution creditor, s. 11 does not invalidate the execution.—*Stern v. Tegner; Smith, claimant*, 77 L.T. 347.
- (vi.) **C. A.—Service of Writ—Defendant leaving Jurisdiction—Substituted Service—***O. ix., r. 2.*—When a defendant went out of the jurisdiction before service of a writ could be effected but not for the purpose of evading service, it was held that an order for substituted service might be made under *O. ix., r. 2.*—*Jay and Another v. Budd*, 77 L.T. 335.
- (vii.) **C. A.—District Registrar—Jurisdiction to Set Aside Judgment—***R.S.C., O. xxxv., rr. 1-6.*—A district registrar has a concurrent jurisdiction under *O. xxxv., r. 6*, to set aside a final judgment obtained in the district registry.—*Townend v. Kirkman*, 77 L.T. 419.

- (i.) **C. A.**—*Costs—Action founded on Tort—Agistment—Negligence of Agister—Action in High Court—County Courts Act, 1888, s. 116.*—An action for damages for injuries to a horse, through negligence of an agister, is founded on tort within the meaning of sect. 116 of the County Courts Act, 1888.—*Turner v. Stallibrass*, 77 L.T. 482.
- (ii.) **Q. B. D. in B.**—*Payment into Court with Denial of Liability—Secured Creditor.*—Where money is paid into Court under O. xxii., r. 6, of R.S.C., 1883, with a defence denying liability, and on the defendant's subsequent bankruptcy his trustee admits the plaintiff's claim, either in whole or part, to that extent the plaintiff is a secured creditor in respect of the money paid into Court.—*In re Gordon; ex p. Navalchand*, L.R. [1897] 2 Q.B. 516.

### Presumption of Death:—

- (iii.) **P. D.**—*Probate Practice—Motion to Presume Death—Evidence—Merchant Shipping Act, 1894, ss. 255, 256, 257, 695.*—Upon a motion to presume the death of a man, the certificate of the Registrar-General of Shipping and Seamen was produced in evidence pursuant to the Merchant Shipping Act, 1894. The certificate stated that the person in question was returned as serving upon a certain vessel as second mate at the time when she was last heard of, and that he was "supposed drowned." Two members of the deceased's family swore to their belief in his death, and the underwriters of the vessel had paid the insurance money as on a total loss, while notice had been given to the insurance office in which the deceased's life was insured. On this evidence, the Court presumed the death of the deceased as having occurred on or since the date when the vessel was last heard of.—*In the goods of Adam Dodd (deceased)*, 77 L.T. 137.

### Principal and Agent:—

- (iv.) **H. L.**—*Company—Receiver appointed by Trustees for Debenture-holders—Goods ordered by Receiver after Winding-up—Liability of Trustees.*—Trustees for debenture-holders under a deed authorising them to appoint a receiver to carry on the business as agent for the company, appointed a receiver. He was to pay all moneys received to an account at the trustees' bank, and all cheques drawn were to be countersigned by their solicitor, who was also chairman of the company. Upon a winding-up order being made the liquidator did not interfere with the business, which continued to be carried on by the receiver. *Held*, that the trustees were not liable as principals for the price of goods ordered by the receiver after the winding-up. *Cox v. Hickman*, 8 H. of L. Cas. 268 applied. Decision of Court below (22, 24, i.) reversed.—*Goelling v. Gaskell and Grocott*, L.R. [1897] A.C. 575; 77 L.T. 314.

### Principal and Surety:—

- (v.) **Q. B. D.**—*Covenant by Surety for Payment of Interest and Premiums on Policies—Judgment Against Principal Debtor—Merger—Release of Surety—Agreement to Settle Action—Not Embodied in Order of Court—Construction of Covenant.*—By a deed made between a mortgagee of life policies, the mortgagor and two sureties for the latter, the sureties covenanted with the mortgagee that in the event of the mortgagor not paying the interest on the mortgage-money and the premiums on the policies, they would pay the said interest and premiums within a certain period of their respectively falling due. The mortgagee obtained judgment for the principal sum against the mortgagor. *Held*, that their liability to pay future interest became merged in the judgment, and the sureties were released. But, *semble*, there was no merger of interest accrued before the judgment. A verbal agreement

as to settlement of an action made before hearing, but not embodied in terms of settlement at the hearing which are made an Order of Court, does not bind the parties. Observations as to construction of covenants for payment of premiums and interest. *Grey v. Pearson*, 6 H.L. Cas. 61, followed.—*Faber v. Earl of Lathom*; *Gye third party*, 77 L.T. 169.

### Probate:—

- (i.) **P. D.**—*Administrator and Receiver Pendente Lite in Probate Suit*—*Chancery Proceedings against Administrator*—*Jurisdiction of Probate Division to Restrain*—*Probate Act, 1857, ss. 70, 71—Judicature Act, 1873, s. 24, sub-s. 5.*—A Judge of the Probate Division has no power to restrain or stay proceedings in the Chancery Division against a person appointed by the Probate Division administrator and receiver *pendente lite* in a probate suit. Leave should however be given to the administrator and receiver to defend such proceedings, and he must apply for his costs in the Probate Division and also in the Chancery proceedings out of the estate.—*Martin v. Toleman*, 77 L.T. 198.
- (ii.) **P. D.**—*Practice*—*Undue Influence and other Pleas*—*Right of Plaintiffs to Open whole Case and Reserve Evidence Rebutting Charge of Undue Influence.*—In a probate case where the three plaintiffs propounded the will which was opposed on grounds (*inter alia*) of undue influence against all three plaintiffs. *Held*, counsel for plaintiff was entitled to open the whole case, and after calling one plaintiff to reserve the evidence of the other two.—*Faldo and Others v. Lovett*, 77 L.T. 220.
- (iii.) **P. D.**—*Limited Administration*—*Grant with Will annexed to Assignee of Estate.*—Where the assignee of the freehold and pure personal estate of a testator applied for a grant of administration limited to certain leaseholds held by the trustee upon trust for the said assignee, it was *held* that in such cases it was safer that the will should be annexed to the grant.—*In the goods of Samuel Butler (deceased)*, 77 L.T. 376.
- (iv.) **P. D.**—*Mutual Will*—*Probate of Part.*—Where a husband and wife made a mutual will leaving all their property to each other, and further making provision as to what was to be done with the property in the event of the survivor dying without altering these provisions. The wife dying first probate was granted to the husband of so much of the document as became operative through her death.—*In the goods of Jessie Piazzi Smyth (deceased)*, 77 L.T. 365.
- (v.) **P. D.**—*Will and Codicil*—*Codicil not forthcoming at Testator's Death*—*Presumption of Revocation*—*Probate of parts of Will not revoked by execution of Codicil.*—Where a will and codicil revoking part of the will were proved to have been duly executed, but only the will was forthcoming after the testator's death, the Court, while allowing the presumption as to the destruction of the codicil, granted probate only of such parts of the will as the codicil by its execution had not revoked.—*In the goods of Debac (deceased)*; *Sanger v. Hart*, 77 L.T. 374.

### Public Health:—

- (vi.) **Q. B. D.**—*Drain or Sewer*—*"Single Private Drain"*—*Liability of Owner to Abate Nuisance*—*Public Health Acts Amendment Act, 1890, s. 19.*—The expression "single private drain" in sect. 19 of the Public Health Act, 1890, applies to a drain, whether used for the drainage of one or more buildings, which is constructed upon private ground, and into which the public cannot drain without the owner's consent. The owner of such buildings may be compelled by the local authority, under sect. 41 of the Public Health Act, 1875, to abate nuisances in such drain.—*Seal v. Merthyr Tydfil Urban District Council*, 77 L.T. 303.



- (i.) **Q. B. D.**—*Privy Accommodation—Substitution of Water Closets for Privies—General Resolution of Local Authority Requiring Particular Kind of Water Closet—Validity—Public Health Act, 1875, s. 36.*—Sect. 36 of the Public Health Act, 1875, does not authorise a local authority to lay down a general rule for the substitution of a particular kind of water closet applicable in every case irrespective of the requirements of the house, but only to order the individual owner or occupier to provide a sufficient water closet; and it is for the authority to say whether the water closet so provided is sufficient or not. Any resolution of a local authority laying such a general rule is invalid and invalidates all subsequent proceedings taken thereunder.—*Wood v. Mayor, &c., of Widnes*, L.R. [1897] 2 Q.B. 357; 77 L.T. 806.
- (ii.) **C. D.**—*Land acquired for Sewage Purposes—Not Immediately Wanted—Order for Sale—Public Health Act, 1875, s. 175.*—Lands acquired by a district council for sewage purposes, but not immediately required for such, may be temporarily used for purposes not inconsistent with its ultimate use for sewage purposes, and need not be sold under sect. 175 of the Public Health Act, 1875.—*Attorney-General v. Teddington Urban District Council*, 77 L.T. 426.
- (iii.) **C. D.**—*Railway Company—Drains for Carrying Away Surface Water—Sewage Flowing Therein—Drains—Whether Vested as Sewers in Local Authority—Injunction—Railway Clauses Consolidation Act, 1845, ss. 16, 68-70, 73—Public Health Act, 1875, ss. 4, 13, 15, 21.*—A railway constituted by an Act passed in 1846, was by a subsequent Act transferred to the plaintiffs. To the south of a station on the railway was a field on the north and south sides of which were ordinary country ditches communicating by a 9 in. pipe with the drainage system on the plaintiffs' land and ultimately flowing into an 18 in. pipe which discharged into a pool by the side of the line. The pipes were constructed by the plaintiffs or their predecessors. The defendants alleged that these ditches carried off sewage from eight houses, and that as the sewage passed to the system of pipes in the drain they had become sewers within the meaning of the Public Health Act, 1875, and were vested in them. In 1896 the defendants proceeded to convey such sewage by another ditch into the pipes and drains of the plaintiffs, and it was proved that although sewage had previously passed into such pipes and drains, the plaintiffs had no knowledge that it did so. *Held*, that the pipes and drains of the plaintiffs were within the exception in sect. 13 of the Public Health Act, 1875, namely, sewers made and used for the purpose of draining, preserving, or improving land under a local or private Act of Parliament, and that consequently they did not vest in the defendants, and that the plaintiffs were entitled to an injunction restraining the defendants from conveying the sewage in such manner.—*London and North-Western Railway Company and Great Western Railway Company v. Runcorn District Council*, 77 L.T. 485.

#### **Railway:—**

- (iv.) **H. L.**—*Station—Right to exclude Public—Jurisdiction of Railway Commissioners.*—A railway company may exclude from its stations all persons other than those using or wishing to use them, or may admit them on condition, unless the Railway Commissioners have decided to the contrary. A member of the public unreasonably excluded may apply to the Railway Commissioners, but has no remedy by action at law.—*Perth General Station Committee v. Ross*, L.R. [1897] A.C. 479; 77 L.T. 226.

#### **Rating:—**

- (v.) **Q. B. D.**—*Poor Rate—Station Appurtenances—Part of Railway directly Earning Profits.*—Lines primarily used for carrying passengers and

goods are rateable as part of the railway directly earning profits and not as station appurtenances, though shunting and unloading be done or empty carriages left on them.—*The Assessment Committee of Stockport Union* (appellants) *v. The London and North Western Railway Co.* (respondents), 77 L.T. 244.

- (i.) **Q. B. D.**—*Market Gardens—Glasshouses in—Exemption from Rates—Agricultural Rates Act, 1896, ss. 1, 2, 5, 6, 9—Agricultural Rates Order, 1896, Arts. 1, 4.*—Market garden ground, with glasshouses on it used for the purpose of raising fruit and vegetables, is "agricultural land" within the meaning of the Agricultural Rates Act, 1896, and entitled to the exemption created by sect. 1 of that Act in favour of agricultural land. The occupier of agricultural land being entitled to be heard at Quarter Sessions will be heard on appeal to the High Court, but will not be allowed costs.—*Smith v. Richmond*, 77 L.T. 161.

### Revenue:—

- (ii.) **C. A.**—*Stamp Duty—Conveyance on Sale—Transfer of Shares in one Company in Exchange for Shares in Another—Stamp Act, 1891, ss. 54, 55.*—Decision of Court below (22, 107, v.) affirmed.—*J. and P. Coats, Limited, v. Inland Revenue Commissioners*, 77 L.T. 270.
- (iii.) **C. A.**—*Estate Duty—Exemption—Settlement of Personal Property—"Disposition"—Finance Act, 1894, s. 21, sub-s. 1.*—Decision of Court below (22, 107, vi.) affirmed.—*Attorney-General v. Dodington*, L.R. [1897] 2 Q.B. 373; 77 L.T. 299.
- (iv.) **C. A.**—*Stamp Duty—Instrument Creating a Perpetual Annuity—Conveyance on Sale—Stamp Act, 1891, ss. 54, 60, 87.*—Decision of Court below (23, 17, vi.) affirmed.—*The Mersey Docks and Harbour Board v. Commissioners of Inland Revenue*, L.R. [1897] 2 Q.B. 316; 77 L.T. 120.
- (v.) **C. A.**—*Income Tax—Building Society—Interest on Loans to Members—Liability of Society to Income Tax—Income Tax Act, 1853, ss. 1, 2, sched. D.*—Decision of Court below (23, 3, iii.) affirmed.—*The Leeds Permanent Benefit Building Society v. Mallandaine*, L.R. [1897] 2 Q.B. 402; 77 L.T. 122.
- (vi.) **Q. B. D.**—*Estate Duty—Surrender by Life Tenant to Remainderman—Duty Payable on Death of Tenant for Life—Finance Act, 1894, ss. 1; 2 (1) a, b, c, d (2); 5 (1) a, b (2), (3); 7 (5), (7) a, b; 22 (i).*—Estate duty by the remainderman is payable under sect. 2 (1) b of the Finance Act, 1894, on the death of a life tenant in respect of property subject to such life interest, although such life tenant had surrendered her life interest to the remainderman. The duty is payable in respect of such property as property passing on death, notwithstanding the conveyancing rule as to merger.—*Attorney-General v. Beech and Another*, L.R. [1897] 2 Q.B. 535; 77 L.T. 156.
- (vii.) **C. A.**—*Stamp Duty—Marketable Security—American Bond authenticated by endorsement in England—Issued in United Kingdom—Stamp Act, 1891, s. 82.*—Decision of Court below (22, 107, iv.) affirmed.—*Baring* (appellant) *v. Commissioners of Inland Revenue* (respondents), 77 L.T. 353.
- (viii.) **Q. B. D.**—*Estate Duty—Property Settled by either Husband or Wife on the Other—Survivor Entitled to Property Settled by Survivor—Exemption from Duty—Finance Act, 1894, s. 21, sub-s. 5.*—Sub-sect. (5) of sect. 21 of the Finance Act, 1894, applies as well to cases where, on the death of either husband or wife, the income only of property settled by the survivor reverts to the survivor, as to cases where the whole property settled passes to the survivor, *e.g.*, where under a covenant to settle after acquired property in a marriage settlement the income of

property belonging to the wife was settled on the husband for life, and on the husband's death the wife, as survivor, became entitled, not only to the income, but to the property itself, estate duty is not payable in respect of such property until the death of the survivor.—*Attorney-General v. Strange*, 77 L.T. 362.

- (i.) **C. A.**—*Income Tax—Brewers—Tied Houses—Deduction of Expense of Repairs—Balance of Profits of Brewery—Income Tax Act, 1842, s. 100—Income Tax Act, 1853, s. 2.*—Decision of Court below (23, 17, iii.) affirmed.—*Brickwood & Co., Limited, v. Reynolds*, 77 L.T. 456.

### School Board:—

- (ii.) **Q. B. D.**—*Teacher's Salary—Deductions by Agreement towards Superannuation Fund—Elementary Education Act, 1870, s. 35.*—A teacher appointed by the London School Board, under sect. 35 of the Elementary Education Act, 1870, agreed with the board that they should retain portion of her salary as contribution to a superannuation fund formed out of contributions from teachers and managed for their benefit by the board. It was held, that the teacher could not after leaving the board's service claim to recover any portion of the sums so retained by the board. The term "remuneration" in sect. 35 of the Act is sufficiently wide to include direct payments to the teacher, and payments made to a fund for her and other teachers' common benefit.—*Phillips* (appellant) *v. School Board of London* (respondents), 77 L.T. 397.

### Sea Shore:—

- (iii.) **C. A.**—*Foreshore of Tidal and Navigable Rivers—Right to Fix Moorings—Immemorial User—Presumption of Legal Origin.*—An immemorial user of the foreshore in tidal and navigable rivers by the owners of vessels by fixing moorings in the soil, in order to attach their vessels to them, may be supported either as an ordinary incident of the navigation of such waters or on a presumption of a legal origin by grant from the Crown of the foreshore to all persons navigating the waters to use it for fixing moorings.—*Attorney-General v. Wright*, L.R. [1897] 2 Q.B. 318; 77 L.T. 296.

### Settled Land:—

- (iv.) **C. D.**—*Practice—Settled Estates Act, 1877, s. 50—Settled Land Act, 1882, s. 33—No Tenant for Life—Investment of Money as Capital Money—Married Woman—Dispensing with Examination.*—Under a discretionary trust in favour of a man, his wife, and children, with remainders over, though there is no life tenant to exercise the option as to investments given by sect. 33 of the Settled Land Act, 1882, yet the money may be invested as capital money under that Act, and separate examination of a married woman consenting to any application to the Court under the Settled Estates Act, 1877, may be dispensed with where her interests are remote and represented by trustees.—*In re Tennyson's Trusts*, 77 L.T. 484.

### Settlement:—

- (v.) **C. D.**—*Request of Personalty to be Invested in Realty—Repairs—Equitable Tenant for Life.*—A testator empowered his trustees, by direction or with consent of tenant for life, to invest in real estate, but gave no directions as to repairs or management of real estate so purchased. The fact that the trustees allowed the tenant for life to enter and receive the rents did not make him liable to do any repairs, which must be executed by the trustees and the cost charged to capital.—*In re Freeman; Dimond v. Newburn*, 77 L.T. 460.

**Ship:—**

- (i.) **C. A.**—*Seaman—Termination of Service at Foreign Port—Maintenance and Passage Home—Merchant Shipping Act, 1894, s. 186.*—Decision of Court below (23, 20, iv.) affirmed.—*Edwards v. Steel, Young & Co., L.R. [1897] 2 Q.B. 327; 77 L.T. 297.*
- (ii.) **C. A.**—*Charter-Party—Construction—Freight Payable in Advance.*—Under a charter-party, by which it was provided that the charterer should pay freight at the rate of £709 per month, and at the same rate for any part of a month, hire to continue until the ship's re-delivery to the owner, payment for said hire to be made in cash monthly in advance, it was *held*, that the charterer was bound to pay the full freight in advance at the beginning of each month, although it might be probable that the hire would not continue for the whole month.—*Tonnellier v. Smith and Others, 77 L.T. 277.*
- (iii.) **C. A.**—*Charter-Party—Ship to Load "Always Afloat"—Berth as Ordered by Charterers—Delay caused by Ordinary Tides—Reasonable Order.*—A charter-party provided that a ship should proceed to a certain dock and load a cargo in the customary manner always afloat, as and where ordered by the charterers, both parties to the contract knowing that there was a possibility of delay on arrival of the ship owing to neap tides. When the ship arrived at the dock, the charterers ordered her to a berth, where, through the neap tides, she could not load immediately always afloat, and a detention of some days took place, until the spring tides enabled her to load always afloat at the berth as ordered. *Held*, the order was such, as the charterers were entitled to give under the charter-party, and they were not liable to the shipowners for the delay.—*The Carlton Steamship Company, Limited, v. The Castle Mail Packets Company, Limited, L.R. [1897] 2 Q.B. 485; 77 L.T. 332.*
- (iv.) **C. A.**—*Detention at Port of Loading—Exception in Charter-Party—Strikes, Lock-outs, Accidents to Railway—Other Names Beyond Charterers' Control.*—By a charter-party, a ship was to load a cargo of petroleum at a certain port, and the charterers were not to be responsible for delay in loading caused by strikes, lock-outs, accidents to railway . . . or other causes beyond charterers' control. Owing to a breakdown in the railway, the loading could not commence, as there was no oil, and the workmen employed in packing the oil were dismissed by the charterers. But after the supply of oil recommenced, the loading was delayed by the difficulty in getting the men together again and restarting the packing, and also by the shippers loading other steamers first. *Held*, that the delay in loading after the oil supply recommenced was not covered by the exception clause, and the charterers were liable to damages for the detention.—*In re An Arbitration between Messrs. Richardson and Samuel & Co., 77 L.T. 479.*
- (v.) **Adm.**—*Bill of Lading—Exception of "Accidents of the Seas"—Carriage by Steamship—Damage to Cargo by Heat—Proximate Cause.*—Damage done to a cargo of grain carried on a steamship through closing of the ventilation, necessitated by exceptionally heavy weather is damage of which the severity of the weather was the proximate cause, and is therefore covered by an exception of "accidents of the seas" in a bill of lading.—*The Thruscoe, L.R. [1897] P. 301; 77 L.T. 407.*
- (vi.) **Adm.**—*Compulsory Pilotage—Liability of Owner—Passengers—Distressed Seamen—Merchant Shipping Act, 1894, ss. 191, 192, 625.*—Distressed British seamen being conveyed in a British steamer under a conveyance order of a British consular officer were held not to be

"passengers" within the meaning of sect. 625 of the Merchant Shipping Act, 1894. Therefore the steamship not being bound to take a pilot her owner was liable for damage resulting from a collision due to a pilot in charge of the steamship.—*The Clymene*, L.R. [1897] A.C. 295.

### Thames :—

- (i.) **C. A.**—*Conservators—Bed of the River—Rights of Owner of Shore as to Raising Sand or Gravel—Thames Conservancy Act, 1894, ss. 87, 238.*—The expression "bed of the Thames" in sect. 87 of the Thames Conservancy Act, 1894, includes the soil between ordinary high water mark on one side of the river where it is tidal and ordinary high water mark on the other. Sect. 238 does not reserve to the owner of such soil the right to take gravel, sand and other substances from it.—*Conservators of River Thames v. Sneed, Dean & Co.*, L.R. [1897] 2 Q.B. 334; 77 L.T. 325.

### Trade Mark :—

- (ii.) **C. D.**—*Registration—Concurrent Applications by Former Partners to Register separately Trade Marks of Old Firm—Special Circumstances—Patents, Designs, and Trades Marks Act, 1883, s. 72.*—The comptroller may refuse registration of a trade mark identical with or bearing a deceptive resemblance to a mark already on the register, not merely in the interest of the registered owner but for the protection of the public. Where concurrent applications are made to register identical or similar trade marks such registration ought not to be permitted unless the Court is satisfied that there is no reasonable probability that harm is likely to arise. The facts that applicants were formerly partners and used for the partnership business marks identical with those now sought to be registered, and that they concur in their applications, are not "special circumstances" entitling them to an exercise in their favour of such discretion as may be vested in the Court under sect. 72 of the Patents, &c., Act, 1883.—*In re Ehrmann's Trade Marks*, L.R. [1897] 2 Ch. 495; 77 L.T. 200.
- (iii.) **C. D.**—"Pirle" and "Pearl"—*Similar Sound—Invented Word—Registration—Patents, &c., Act, 1883, s. 10 (1) (d) (e).*—The words "Pearl" and "Pirle" are to be treated on the same footing on the ground of similarity of sound, and "Pearl" not being registrable as a trade mark, "Pirle," which is a misspelling of "Pearl," cannot be registered.—*In re Ripley and Son's Trade Mark*, 77 L.T. 495.

### Trade Name :—

- (iv.) **C. A.**—*Similar Names—Tendency to Deceive—Form of Injunction—L. M. Pinet carried on a small and recently established business for the manufacture and sale of boots and shoes made for a special purpose. F. Pinet et Cie. were an old established firm of boot and shoe makers whose goods were widely known as "Pinet's." L. M. Pinet sold his business to a company (Maison Pinet, Limited), which was formed for the manufacture and sale as well of the special boots and shoes, as also of boots and shoes generally. Held, that although the business of L. M. Pinet was not the same as the plaintiffs', yet the company formed to acquire it had no intention to restrict their operations in any way, and would probably develop their business at the expense of the plaintiffs, who were therefore entitled to an injunction limited as in the form in *Montgomery v. Thompson* [1891] A.C. 217.—*F. Pinet & Cie. v. Maison Pinet, Limited*, 77 L.T. 322.*

**Trustee :—**

- (i.) **C. D.**—*Constructive Trustee—Purchase by Tenant for Life under Statutory Right—Improvements.*—A tenant for life of settled land purchased under a statutory right land adjoining the settled land, executed on it permanent improvements, and devised it by his will. *Held*, that the devisees were trustees of the purchased land for the remaindermen under the settlement, who were entitled to a conveyance on recouping the estate of the tenant for life the amount of the purchase money and the value of the improvements.—*Rowley v. Ginnever*, L.R. [1897] 2 Ch. 503; 77 L.T. 302.
- (ii.) **C. D.**—*Breach of Trust—Relief under Judicial Trustee Act, 1896—Time for applying.*—Where under an order made in 1893 a trustee had been found by the Chief Clerk's certificate liable in respect of a breach of trust, it was *held* that he was not too late in applying, on further consideration, for relief under sect. 3 of the Judicial Trustee Act, 1896, and that he ought to be allowed the opportunity at that stage of shewing that his case was a proper one for relief under that Act.—*In re Stuart; Smith v. Stuart*, L.R. [1897] 2 Ch. 583; 77 L.T. 128.
- (iii.) **C. D.**—*Breach of Trust—Executor Guilty of Derastavit—Relief—Judicial Trustees Act, 1896, s. 3.*—An executor was guilty of undue delay in issuing the usual advertisements for claims, and meanwhile paid a legacy and allowed the testator's widow to receive the income of the estate for the support of herself and family. Afterwards large claims, exceeding the value of the estate as ascertained at testator's death, were substantiated against the executor. *Held*, that although there had been undue delay the executor had not, under the circumstances, acted unreasonably, and might be relieved under the Judicial Trustees Act, 1896, from the consequences of his *derastavit*.—*In re Kay; Moley v. Kay*, L.R. [1897] 2 Ch. 518.

**Will :—**

- (iv.) **H. L.**—*Construction—Rule in Shelley's Case—Equitable Estate Tail—Insanity—Subsequent Evidence of.*—The rule in Shelley's case is not a mere rule of construction designed to carry out the intentions of the testator, but is a strict rule of law, which applies wherever there is a gift over including the whole line of heirs, general or special. Where the trusts of a will require that during minority of the testator's child, the legal estate should be in the trustees and be in them again after the child's death, the legal estate remains in the trustees throughout, and the child takes an equitable estate tail and the estate limited to his heirs special being equitable also, the rule in Shelley's case applies. *Harton v. Harton*, 7 T.R. 652, and *Jesson v. Wright*, 2 Bli. 1, approved. *Montgomery v. Montgomery*, 3 J. and L. 47, disapproved. A deed executed by a married woman certified at the time to be of competent understanding will not be set aside merely because several years afterwards she is found by a jury to be insane, and to have begun to be insane at a period prior to the execution of the deed.—*Van Grutten v. Foxwell and Others*, L.R. [1897] A.C. 653; 77 L.T. 170.
- (v.) **C. D.**—*Construction—Mistake by Testator as to Number of Children—Presumption of Intention—Practice—Costs—O. lxx., r. 14b.*—Under a gift to the two children of a testator's son, there being in fact four, viz., two sons and two daughters, alive at the date of testator's will and of his death, it was *held* that all four children, and not the two daughters only, took notwithstanding a direction that the shares were to be paid to the said children on their respectively attaining the age of twenty-one years, or marrying under that age. The will directed

the testator's funeral and testamentary expenses to be paid out of his residuary estate. *Held*, the proper costs of an action by the trustees of the will to determine which children were entitled must be paid out of the residue as part of the testamentary expenses, notwithstanding Order lxx., r. 14b.—*In re Groom; Booty v. Groom*, L.R. [1897] 2 Ch. 407; 77 L.T. 154.

- (i.) **C. A.**—*Legacy—Erroneous Statement of Fact—Gift of Legacy “in addition” to Sums owing by Testatrix’s Husband—Falsa Demonstratio.*—By her will a testatrix bequeathed to A. “the sum of £300 in addition to the sums owing to her from my late husband’s estate.” There were in fact no such sums owing to A., but A. had received an I.O.U. for £500 and a promissory note for the same amount from the testatrix’s husband as gifts, but they were not paid before he died. The testatrix had the whole of her husband’s estate. In her administration accounts A. included the payment to herself of the two sums of £500. *Held*, that the testatrix, being the person to pay, and having the whole estate of her husband in her hands, she intended that A. should receive thereout the two sums of £500 plus the £300, the reference to such sums as debts of her husband being merely a *falsa demonstratio*.—*In re Rowe; Pyke v. Hamlyn*, 77 L.T. 475.

## INDEX.

ADAM DODD (DECEASED), *in the goods of* (77 L.T. 137), 48, iii.  
 Amalgamated Syndicates, *in re* (L.R. [1897] 2 Ch. 600; 77 L.T. 431), 34, iii.  
 Arbitration between Thos. Palmer and Co. and Hosken & Co., Ltd., *in re*, An (77 L.T. 350), 29, iv.  
 Arbitration between Messrs. Richardson and Samuel & Co. (77 L.T. 470), 53, iv.  
 Armstrong’s Patent, *in re*; Yates v. Armstrong (77 L.T. 267), 46, ii.  
 Ashton, *in re*; Ingram v. Papillon (L.R. [1897] 2 Ch. 574), 23, 15, i.  
 Assessment Committee of Stockport Union (Apps.) v. L. & N.W. Railway Co. (Resps.) (77 L.T. 244), 50, v.  
 Attorney-General v. Beech and Another (L.R. [1897] 2 Q.B. 535; 77 L.T. 156), 51, vi.  
 Attorney-General v. Dodington (L.R. [1897] 2 Q.B. 373; 77 L.T. 290), 22, 107, vi.; 51, iii.  
 Attorney-General v. Mayor, &c., of Newcastle-upon-Tyne (L.R. [1897] 2 Q.B. 384; 77 L.T. 203), 47, iv.

Attorney-General v. Strange (77 L.T. 362), 51, viii.  
 Attorney-General v. Teddington U. D. C. (77 L.T. 426), 50, ii.  
 Attorney-General v. Wright (L.R. [1897] 2 Q.B. 318; 77 L.T. 295), 52, iii.  
 BAKER v. WILLIAMS (77 L.T. 495), 36, v.  
 Balme (deceased), *in the goods of* (77 L.T. 219), 23, 14, vi.  
 Bank of Australasia v. Palmer (L.R. [1897] A.C. 540), 38, v.  
 Baring (App.) v. Commissioners of Inland Revenue (Resps.) (77 L.T. 353), 22, 107, iv.; 51, vii.  
 Barraclough v. Brown (L.R. [1897] A.C. 615), 23, 21, i.  
 Bellamy & Co. (Resps.) v. Lunn & Co. (Apps.) (77 L.T. 396), 45, i.  
 Bensaude and Others v. Thames and Mersey Marine Insurance Co., Ltd. (L.R. [1897] A.C. 609; 77 L.T. 282), 22, 45, iv.; 43, v.  
 Birmingham Vinegar Brewery Co. v. Powell (L.R. [1897] A.C. 710), 19, 27, i.; 106, iv.; 20, 58, iii.; and 23, 21, v.

- Booty v. Groom**; *in re Groom* (L.R. [1897] 2 Ch. 407; 77 L.T. 154), 55, v.
- Boisanquet v. St. John D'El Rey Mining Co., Ltd.** (77 L.T. 206), 34, i.
- Boulter v. Justices of Kent** (L.R. [1897] A.C. 556; 77 L.T. 288), 22, 15, viii.; 41, ii.
- Brickwood & Co., Ltd. v. Reynolds** (77 L.T. 456), 23, 17, iii.; 52, i.
- British & Foreign Marine Insurance Co., Ltd., v. Sturge** (77 L.T. 208), 43, iv.
- British Premium Provident Association v. Bywater** (L.R. [1897] 2 Ch. 531), 23, 11, vi.
- Broster, in re**; *e. p. Pruddah* (L.R. [1897] 2 Q.B. 429), 23, 5, iv.
- Brown v. Attorney-General for New Zealand** (77 L.T. 414), 36, iii.
- Butler, Samuel, in the goods of** (77 L.T. 376), 40, iii.
- CAREW, e. p.** (L.R. [1897] A.C. 719), 33, ii.
- Carlton Steamship Co., Ltd., v. The Castle Mail Packets Co., Ltd.** (L.R. [1897] 2 Q.B. 485; 77 L.T. 332), 53, iii.
- Chilcott, Eliza, in the goods of** (L.R. [1897] P. 223; 77 L.T. 372).
- Chioggia, the** (77 L.T. 472), 31, iii.
- City of Montreal v. Standard Light and Power Co.** (L.R. [1897] A.C. 527; 77 L.T. 115), 32, ii.
- Clark, in re**; *e. p. Clark* (77 L.T. 417), 30, ii.
- Clymene, the** (L.R. [1897] A.C. 295), 53, vi.
- Coats, Limited, J. & P., v. Commissioners of Inland Revenue** (77 L.T. 270), 22, 107, v.; 51, ii.
- Colyer & Another v. Isaacs** (77 L.T. 198), 44, ii.
- Conservators of River Thames v. Smeed, Dean & Co.** (L.R. [1897] 2 Q.B. 334; 77 L.T. 325), 54, i.
- Court v. Berlin & Others** (77 L.T. 293), 46, i.
- Cunningham v. Cunningham** (77 L.T. 405), 37, vii.
- DAWSON v. AFRICAN CONSOLIDATED LAND & TRADING CO., LTD.** (77 L.T. 392), 34, iv.
- Debac (deceased), in the goods of**; **Sanger v. Hart** (77 L.T. 374), 49, v.
- De Hertel v. Goddard & Others** (77 L.T. 118), 32, iii.
- Derby (Mayor, &c., of) v. Derbyshire County Council** (L.R. [1897] A.C. 550; 77 L.T. 107), 22, 23, v.; 47, ii.
- Dimond v. Newburn**; *in re Freman* (77 L.T. 460), 52, v.
- Dodd, Adam (deceased), in the goods of** (77 L.T. 137), 48, iii.
- Dr. Jaeger's Sanitary Woollen System Co., Ltd., v. Walker and Sons** (77 L.T. 180), 34, vi.
- ECROYD v. COULTHARD** (L.R. [1897] 2 Ch. 544; 77 L.T. 357), 35, ii.
- Edwards v. Edwards & Wilson** (L.R. [1897] P. 316; 77 L.T. 406), 23, 18, iv.; 37, vi.
- Edwards' Settlement, in re** (L.R. [1897] 2 Ch. 412).
- Edwards v. Steel, Young & Co.** (L.R. [1897] 2 Q.B. 327; 77 L.T. 297), 23, 20, iv.; 53, i.
- Ehrmann's Trade Marks, in re** (L.R. [1897] 2 Ch. 495; 77 L.T. 200), 54, ii.
- Emile George, e. p.**; **Reg. v. Governor of Holloway Prison** (77 L.T. 247), 36, ii.
- FABER v. EARL OF LATHOM**; **GYR THIRD PARTY** (77 L.T. 168), 48, v.
- Faldo and Others v. Lovett** (77 L.T. 220), 49, ii.
- Felix Hadley & Co., Ltd., v. Hadley** (77 L.T. 131), 33, iii.
- Fielding & Co. v. Corry and Others** (77 L.T. 453), 31, ii.
- Forster v. Clowser** (L.R. [1897] 2 Q.B. 362), 23, 13, v.
- Fort, in re**; *e. p. Schofield* (77 L.T. 274), 30, i.
- Freman, in re**; **Dimond v. Newburn** (77 L.T. 460), 52, v.
- Friend v. Young** (L.R. [1897] 2 Ch. 421), 23, 11, iii.
- GALLAGHER v. RUDD** (77 L.T. 367), 41, iii.
- Gauder v. Dassenaikie and Others** (L.R. [1897] A.C. 547; 77 L.T. 321), 32, iv.
- Gordon, in re**; *e. p. Navalchand* (L.R. [1897] 2 Q.B. 516), 48, ii.
- Gosling v. Gaskell and Grocott** (L.R. [1897] A.C. 575; 77 L.T. 314), 22, 24, i.; 48, iv.
- Graham v. Sutton, Carden & Co.** (L.R. [1897] 2 Ch. 367), 23, 11, v.



- Grange v. Silcocks** (77 L.T. 340), 38, i.
- Greta Holme, the** (L.R. [1897] A.C. 596; 77 L.T. 231), 22, 28, iii.; 29, ii.
- Groom, in re; Booty v. Groom** (L.R. [1897] 2 Ch. 407; 77 L.T. 154), 55, v.
- Gruger, in re; c. p. London and Universal Bank** (L.R. [1897] 2 Q.B. 461), 23, 2, vi.
- Guardians of West Derby Union v. Metropolitan Life Assurance Society** (L.R. [1897] A.C. 647; 77 L.T. 284), 22, 71, iv.; 46, iv.
- HANDSWORTH LOCAL BOARD v. TAYLOR** (L.R. [1897] 2 Ch. 442), 42, iii.
- Handsworth U. D. C. v. Derrington** (L.R. [1897] 2 Ch. 438), 42, iv.
- Hatton v. Treeby** (L.R. [1897] 2 Q.B. 452; 77 L.T. 309), 39, v.
- Heston v. Isleworth District Council and Grout** (77 L.T. 118), 23, 9, v.
- Heywood, in re; Parkington v. Heywood** (L.R. [1897] 2 Ch. 593; 77 L.T. 423), 29, i.
- Hill v. Hicksin** (L.R. [1897] 2 Ch. 579; 77 L.T. 127), 45, v.
- Hill v. Rowlands** (L.R. [1897] 2 Ch. 361), 23, 11, ii.
- Hill (Viscount) v. Bullock** (L.R. [1897] 2 Ch. 482; 77 L.T. 240), 22, 97, iv.; 39, ii.
- Hirsch & Co. v. Burns and Another** (77 L.T. 377), 33, iv.
- Holt v. Holt; in re Holt** (L.R. [1897] 2 Ch. 525), 23, 18, vii.
- Hopper, in re (a Lunatic)**, (77 L.T. 154), 43, ii.
- Howard v. Howard** (77 L.T. 140), 44, vi.
- Humphreys, in re; c. p. Roberts** (77 L.T. 501), 30, iii.
- Hunt v. Hunt** (77 L.T. 421), 23, 8, i.; 40, ii.
- INGRAM v. PAPILLON; in re ASHTON** (L.R. [1897] 2 Ch. 574), 23, 15, i.
- JAMES v. DICKINSON; in re MATSON** (L.R. [1897] 2 Ch. 509), 23, 6, i.
- Jay and Another v. Budd** (77 L.T. 335), 47, vi.
- KAY, in re; MOSLEY v. KAY** (L.R. [1897] 2 Ch. 518), 55, iii.
- Kelly v. London Pavilion, New Tivoli, and Oxford** (77 L.T. 215), 34, v.
- Kent County Council v. Lord Gerard** (L.R. [1897] A.C. 633; 77 L.T. 109), 22, 64, vi.; 39, iv.
- Kerr v. Kerr** (L.R. [1897] 2 Q.B. 439), 23, 8, ii.
- Kerrison v. Smith** (L.R. [1897] 2 Q.B. 445; 77 L.T. 344), 35, i.
- Kharaskhoma Exploring & Prospecting Syndicate** (L.R. [1897] 2 Ch. 451), 23, 4, vi.
- Kimberley Waterworks Co. v. De Beers Consolidated Mines Co.** (L.R. [1897] A.C. 515; 77 L.T. 116), 32, i.
- King v. Eversfield** (L.R. [1897] 2 Q.B. 475; 77 L.T. 195), 40, v.
- Kingston Race Stand v. Mayor, &c., of Kingston** (L.R. [1897] A.C. 509), 33, i.
- LAMBETH OVERSEERS v. LONDON COUNTY COUNCIL** (L.R. [1897] A.C. 625), 23, 16, ii.
- Leeds Permanent Benefit Building Society v. Mallandaine** (L.R. [1897] 2 Q.B. 402; 77 L.T. 122), 23, 3, iii.; 51, v.
- Lewis (App.) v. Poole (Resp.)** (77 L.T. 369), 41, v.
- London and Colonial Finance Corporation, Ltd., in re** (77 L.T. 146), 33, v.
- London and Lancashire Life Assurance Co. v. Fleming** (L.R. [1897] A.C. 499), 32, vi.
- London and N.W. Railway Co. and G.W. Railway Co. v. Runcorn District Council** (77 L.T. 485), 50, iii.
- London and Universal Bank, c. p.; in re Gruger** (L.R. [1897] 2 Q.B. 461)
- London County Council v. Aylesbury Dairy Co.** (77 L.T. 440), 45, ii.
- London County Council and City of London Brewery Co., in re, An arbitration between** (77 L.T. 463), 42, i.
- London County Council, c. p.; Reg. v. Cluer** (71 L.T. 439), 45, iii.
- London County Council, c. p.; Reg. v. Mead** (77 L.T. 462), 43, iii.
- London County Council v. Wood** (L.R. [1897] 2 Q.B. 482; 77 L.T. 312), 39, vi.
- London Freehold and Leasehold Property Co., Ltd., v. Baron Suffield** (L.R. [1897] 2 Ch. 608; 77 L.T. 445), 38, iv.

**MACLURCAN v. MACLURCAN** (77 L.T. 474), 37, v.  
**Magnolia Metal Co.'s Trade Mark**, *in re* (L.R. [1897] 2 Ch. 371), 22, 110, iv.; 23, 21, vii.  
**Martin v. Toleman** (77 L.T. 188), 49, i.  
**Matson, in re; James v. Dickinson** (L.R. [1897] 2 Ch. 509), 23, 6, i.  
**Mayor, &c., of the Borough of Nottingham, in re** (L.R. [1897] 2 Q.B. 502; 77 L.T. 210), 35, iv.  
**Mayor, &c., of Thetford v. Norfolk County Council** (77 L.T. 498), 43, i.  
**Mayor, &c., of West Hartlepool v. Robinson** (77 L.T. 387), 42, ii.  
**Mersey Docks and Harbour Board v. Commissioners of Inland Revenue** (L.R. [1897] 2 Q.B. 316; 77 L.T. 120), 23, 17, vi.; 51, iv.  
**Morley v. Carter** (77 L.T. 337), 41, i.  
**Mosley v. Kay; in re Kay** (L.R. [1897] 2 Ch. 518), 55, iii.  
**Moss v. Moss** (L.R. [1897] P. 263; 77 L.T. 220), 23, 8, iv.  
**Muddock v. Blackwood** (77 L.T. 493), 35, iii.  
**Murphy v. Arrow** (L.R. [1897] 2 Q.B. 527; 77 L.T. 435), 30, v.  
**NAVALCHAND, e. p.; in re GORDON** (L.R. [1897] 2 Q.B. 516), 48, ii.  
**Newby v. Newby and White** (77 L.T. 142), 37, iii.  
**Norwegian Steamship Normandie, Owners of, v. Owners of British Steamship Pekin** (L.R. [1897] A.C. 532; 77 L.T. 443), 31, v.  
**Nottingham, Mayor, &c., in re** (L.R. [1897] 2 Q.B. 502; 77 L.T. 210), 35, iv.  
**PAGET v. PAGET** (77 L.T. 491), 44, iv.  
**Phillips (apps.) v. School Board of London (resps.)** (77 L.T. 897), 52, ii.  
**Pearse v. Schweder & Co.** (L.R. [1897] A.C. 520), 32, v.  
**Perth General Station Committee v. Ross** (L.R. [1897] A.C. 479; 77 L.T. 226), 50, iv.  
**Peveril Gold Mines, Ltd., in re** (77 L.T. 434), 34, ii.  
**Pincott v. Letts** (77 L.T. 160), 36, i.  
**Pinet and Cie. v. Maison Pinet, Ltd.** (77 L.T. 322), 54, iv.

**Pollock v. Garle** (77 L.T. 415), 38, vi.  
**Pruddah, e. p.; in re Broster** (L.R. [1897] 2 Q.B. 429) 23, 5, iv.  
**Pyke v. Hamlyn; in re Rowe** (77 L.T. 475), 56, i.  
**RALEIGH v. GOSCHEN** (77 L.T. 429), 36, iv.  
**Reg. v. Bishop of Durham** (L.R. [1897] 2 Q.B. 414; 77 L.T. 190), 38, iii.  
**Reg. v. Burrows and Another, Justices; e. p. Wilson** (77 L.T. 338), 40, iv.  
**Reg. v. Burton and Another; Justices; e. p. Young** (L.R. [1897] 2 Q.B. 468; 77 L.T. 364), 40, iii.  
**Reg. v. Cluer; e. p. London County Council** (77 L.T. 439), 45, iii.  
**Reg. v. Governor of Holloway Prison; e. p. Emile George** (77 L.T. 247), 36, ii.  
**Reg. v. Mead; e. p. London County Council** (77 L.T. 462), 43, iii.  
**Reg. v. Wm. Jones** (77 L.T. 503), 39, i.  
**Reilly v. Davies** (77 L.T. 899), 31, i.  
**Richardson v. The Colne Fishery Co.** (77 L.T. 501), 44, v.  
**Ripley and Son's Trade Mark, in re** (77 L.T. 495), 54, iii.  
**Roberts, e. p.; in re Humphreys** (77 L.T. 501), 30, iii.  
**Ross's Charity, in re** (L.R. [1897] 2 Ch. 397), 23, 8, v.  
**Rowe, in re; Pyke v. Hamlyn** (77 L.T. 475), 56, i.  
**Rowley v. Ginnever** (L.R. [1897] 2 Ch. 503; 77 L.T. 302), 55, i.  
**Ruabon Steamship Co., Ltd., v. London Assurance Corporation** (L.R. [1897] 2 Q.B. 456; 77 L.T. 402), 44, i.  
**Rumney and Smith, in re** (L.R. [1897] 2 Ch. 351), 22, 111, ii., and 23, 22, v.  
**Russell v. Russell** (L.R. [1897] A.C. 395; 77 L.T. 249), 40, i.  
**SANGER v. HART; in the goods of DEBAC (DECEASED)** (77 L.T. 374), 49, v.  
**Saunders, in re; Saunders v. Gore** (77 L.T. 450), 29, iii.  
**Schofield, e. p.; in re Fort** (77 L.T. 274), 30, i.  
**Seal v. Merthyr Tydfil Urban District Council** (77 L.T. 303), 49, vi.

- Simpson v. Mayor, &c., of Godmanchester** (L.R. [1897] A.C. 696; 77 L.T. 409), 88, ii.
- Simmons v. Malling Rural District Council** (L.R. [1897] 2 Q.B. 433; 77 L.T. 341), 41, iv.
- Sinclair's Divorce Bill** (L.R. [1897] A.C. 469), 37, iv.
- Slaytor v. Slaytor & Jackson** (L.R. [1897] P. 85; 77 L.T. 141), 23, 14, iv.
- Small v. United Kingdom Marine Insurance Association** (L.R. [1897] 2 Q.B. 311), 22, 109, iv., and 23, 20, v.
- Smith v. Galloway** (77 L.T. 469), 39, iii.
- Smith v. Richmond** (77 L.T. 161), 51, i.
- Smith v. Smith** (L.R. [1897] P. 203; 77 L.T. 206), 87, i.
- Smith v. Stuart; in re Stuart** (L.R. [1897] 2 Ch. 583; 77 L.T. 128), 55, ii.
- Smyth (deceased) in the goods of** (77 L.T. 375), 49, iv.
- South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord** (L.R. [1897] 2 Ch. 487; 77 L.T. 241), 47, i.
- St. Saviour's Union (Apps.) v. Dorking Union (Resps.)**, (77 L.T. 466), 46, v.
- Stern v. Tegner; Smith, claimant** (77 L.T. 337), 47, v.
- Stevens v. Griffin** (L.R. [1897] 2 Q.B. 368), 23, 12, i.
- Stockport Ragged Industrial and Reformatory School, in re** (77 L.T. 425), 46, iii.
- Stockport Union, Assessment Committee of (Apps.) v. L. & N.W. Railway Co. (Resps.)** (77 L.T. 214), 50, v.
- Stokes v. Arkwright** (77 L.T. 400), 45, iv.
- Strohmenger v. Borough of Finsbury Building Society** (L.R. [1897] 2 Ch. 469; 77 L.T. 235), 31, iv.
- Stroud v. Edwards** (77 L.T. 280), 44, iii.
- Stuart, in re: Smith v. Stuart** (L.R. [1897] 2 Ch. 583; 77 L.T. 128), 55, ii.
- Suarez (deceased), in the goods of** (L.R. [1897] P. 82; 77 L.T. 137), 23, 14, vii.
- Sykes v. Sykes** (L.R. [1897] P. 306; 77 L.T. 150), 37, ii.
- Symonds v. Symonds (Queen's Proctor showing cause)** (L.R. [1897] P. 167; 77 L.T. 142), 23, 3, iii.
- TESSYMAN'S TRUSTS, in re** (77 L.T. 484), 52, iv.
- Thames Conservators of River, v. Smeed, Dean & Co.** (L.R. [1897] 2 Q.B. 334; 77 L.T. 325), 54, i.
- Theodora, the** (L.R. [1897] P. 279), 23, 5, v.
- Thetford (Mayor, &c., of) v. Norfolk County Council** (77 L.T. 493), 43, i.
- Thruncoo, the** (L.R. [1897] P. 301; 77 L.T. 407), 53, v.
- Tonnellier v. Smith and Others** (77 L.T. 277), 53, ii.
- Townend v. Kirkman** (77 L.T. 419), 47, vii.
- Tucker (in re The Petition of)** (77 L.T. 140), 23, 8, vi.
- Turnbull, in re; Turnbull v. Turnbull** (L.R. [1897] 2 Ch. 415), 23, 10, v.
- Turner v. Stallibrass** (77 L.T. 482), 48, i.
- VAN GRUTTEN v. FOXWELL & OTHERS** (L.R. [1897] A.C. 653; 77 L.T. 170), 55, iv.
- Viscount Hill v. Bullock** (L.R. [1897] 2 Ch. 482; 77 L.T. 240), 22, 97, iv.; 39, ii.
- WATKINS v. BARNARD** (L.R. [1897] 2 Q.B. 521), 30, iv.
- Webster & Co., Ltd., v. Vincent** (77 L.T. 167), 47, iii.
- West Derby Union (Guardians of) v. Metropolitan Life Assurance Society** (L.R. [1897] A.C. 647; 77 L.T. 284), 46, iv.
- West Hartlepool (Mayor, &c., of) v. Robinson** (77 L.T. 387), 42, ii.
- Wilding v. Sanderson** (L.R. [1897] 2 Ch. 534), 23, 13, iii.
- Williams v. Barmouth Urban District Council** (77 L.T. 383), 41, vi.
- Wood v. Mayor, &c., of Widnes** (L.R. [1897] 2 Q.B. 357; 77 L.T. 306), 50, i.
- YATES v. ARMSTRONG; in re ARMSTRONG'S PATENT** (77 L.T. 267), 46, ii.

# THE LAW MAGAZINE AND REVIEW.

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## I.—LEGAL EDUCATION CONSIDERED IN CONNECTION WITH THE PROPOSED TEACHING UNIVERSITY OF LONDON.

THE London University Commission Bill left the House of Lords and reached the House of Commons on the 21st of March last. In the opinion of persons entitled to speak it is likely to pass through the Representatives' House without much opposition or alteration—although as I write this scarcely seems probable. In the Lords the Bill can hardly be said to have been debated this Session. Indeed the real discussion has been outside Parliament and largely in the Newspaper Press. It is noticeable, however, that while eminent men who happen to be Lawyers have taken part in that discussion, no Lawyer, or other friend of reform, in our System of Legal Education, has considered the possible effect of the Bill upon that question.

The Bill may be said to begin and end with the appointment of a Statutory Commission. It is in fact founded on the Report of the Commission appointed in relation to the Gresham University—as it was then proposed to be called. No fault can fairly be found with the *personnel* of the present Commission: it is composed of representative men of distinction, and the friends of Legal Education will rejoice that Lord Davey is at its head. No one has more knowledge of the subject or of the difficulties which surround it, and no one is more anxious to overcome them. The duty of the Commissioners is to make Statutes and Regulations for the University of London in *general*

accordance with the Report of the former Commissioners, but subject to the modifications indicated in Part I. of the Schedule to the Bill and to any other modifications which may appear to the Commissioners to be expedient. In forming their Statutes and Regulations the Commissioners are further to make due provision for securing the objects mentioned in Part II. of the Schedule. Then follow the usual provisions for the Statutes and Regulations being laid before Parliament, and, for their validity, the approval of the Queen in Council is necessary. Part I. of the Schedule provides for the constitution of the Senate, which shall number 50 members, of whom four are to be appointed by the Inns of Court, and two by the Incorporated Law Society. The Commissioners shall also determine, in the first instance, what the Faculties are to be and what teachers are to be members of the respective Faculties. Boards of Studies are to be constituted, of which some of the members, not exceeding one-fourth of the total number of the Board, may be selected by the Senate outside the members of the Faculties and other University teachers. Part II. of the Schedule provides (amongst other things) for the due representation on the Senate and the Academic Council of all subjects of study and all sections of teachers of the University.

That is the whole Bill.

I do not propose to discuss its possibilities, except from the stand-point of Legal Education.

How will that question be affected should the Bill become law? That there is to be a Faculty of Law is clear—a Faculty under which Law will be taught in the University and in respect of which Degrees may be granted. How will that affect the present arrangements of the Council of Legal Education constituted under the conjoint authority of the Inns of Court? Will the new Faculty supply an efficient substitute for the existing scheme of the Inns of

Court, or will it be complementary to it? Can the two systems work together, and work harmoniously together? What are to be their respective provinces? Finally is the scheme to be abandoned which contemplated the formation of a great School of Law fostered by and under the control of the Inns of Court, with such outside aid as it may elect, or may be required to draw into its Councils?

I know there are some persons (but I believe they are few) who are content with things as they are, and who will say that the teachers in the new Faculty may do some good, and that the Inns of Court may accept their *testimony* in certain subjects, but that, for the rest, things may be allowed to go on as they are.

I do not propose to attempt to answer in detail the questions which I have suggested: my sole object is to urge upon the friends of Legal Education that the time has come when it is incumbent upon them to take counsel together and to determine upon some course of action—to consider whether they are to allow things to continue to drift or whether they are not now called upon in the interests of the Profession and of the Public to make a determined effort to place matters on a more satisfactory basis.

In my address delivered in the autumn of 1895, at the instance of the Council of Legal Education, I gave a brief history of legal education in England, and, while giving credit to the Council for their efforts, I pointed out what I conceived to be the defects and the shortcomings of the existing system.

I shall not repeat here what I then said further than is necessary to recall some important facts in connection with the history of legal education, and to restate briefly why, as I think, the existing system falls below the needs of the case.

The Report of the Commons Committee of 1846 was a complete condemnation of the then existing state of

things : it declared that a proper system of Legal Education ought to meet the wants, not only of the professional but also of the unprofessional student, and that the four Inns of Court should form an aggregate of Colleges or Law University. Finally it suggested that, if the Inns of Court failed to act voluntarily, the pressure of a further Commission should be brought to bear upon them. No doubt things have improved since then, but the main suggestion of a Law University has passed unheeded.

The sole outcome of the report of 1846 was the appointment in 1852 of a Standing Council of eight Benchers, who framed a scheme of lectures in five subjects, namely : (1) Jurisprudence and Roman Law ; (2) Real Property ; (3) Common Law ; (4) Equity ; and (5) Constitutional Law and Legal History. The student still had his choice of reaching the Bar either by (1) passing an examination, (2) attending two sets of lectures over one year, or (3) attending one year in practice chambers. Again in 1855 public discontent was manifested by the appointment of another Commission, which included such distinguished men as Sir W. Page Wood (Lord Hatherley), Sir Alexander Cockburn, and Sir R. Bethell (Lord Westbury), and again the then existing system was condemned. The report insists on the necessity for a preliminary examination before admission as a student, and for a final or test examination before call to the Bar. Seventeen years elapsed before the last requirement was (in 1872) complied with. The Incorporated Law Society had, as far back as 1836, insisted on this condition. Lastly, the report strongly recommends the formation of the four Inns of Court into a Legal University, and insists that the necessary funds shall be provided by the Inns of Court. Later still in 1872 Sir Roundell Palmer (Lord Selborne) carried a resolution in the Commons affirming the necessity for giving effect to the foregoing recommendation, and in 1877 a Bill for the same object passed a second reading in

the House of Lords. Still nothing in this direction has been done! Unquestionably considerable improvements have been effected.

They are these: (1) Final examination before call is compulsory; (2) the powers and numbers of the Council of Legal Education have been increased; (3) the public may be admitted to the lectures; and (4) the Council may arrange for special lectures by special lecturers. Further, it cannot be denied that the curriculum is comprehensive, although it does not include (amongst other subjects) either comparative Law or Colonial Law. But how are the subjects dealt with? For subjects so important and far reaching as Constitutional Law and Legal History there is but one reader and no assistant reader; and Roman Law, International Law, and Jurisprudence are under the guardianship of one reader and one assistant reader.

But there is wanting in the system pursued that tutorial element which forms so important a part of any effective system of teaching. I do not doubt that the lectures are good and the lecturers able men, but with them teaching is not the business of their lives. They lecture and depart; the individual student is not known to them; they are not at hand to help over difficulties or to advise, and above all there is no catechetical instruction which, after all, affords the best means of judging whether the pupil is keeping abreast of his master and assimilating the knowledge presented to him. The latest act of the Council seems to make it clear that under existing conditions it is hopeless and indeed unreasonable to expect that the reader or assistant reader can perform tutorial supervision, or take any but a passing interest in his work. The Council has at one swoop displaced all the readers and assistant readers of last year. If this were done because these gentlemen had proved inefficient, all credit to the Council for their resolute action. But it is not so. I know on competent authority



as to, at least, several of the lecturers that they had done their work with great zeal, ability and thoroughness. The explanation given to me by one of the Council is that the Council thought, if they did not effect frequent changes and thus permitted the idea to grow up that the teachers should be continued in office so long as they did their work well, it would be interfering with them in the pursuit of their profession and it would be unfair to remove them later. Are then these readerships and assistant readerships to be regarded as offices which can be adequately filled by young men on the threshold of their professional lives without any prior experience in teaching? Are they to be dispensed, as the office of revising barrister is dispensed, as a kind of patronage to be given as a help to the barrister in the earlier years of his career but to be abandoned when experience had made him a useful teacher? Is it possible that men can take pride in their work under such conditions? It seems to me that such a policy renders it impossible to look to the creation of an experienced professional class of teacher, and suggests that all that is expected from the Council teachers is that they shall be able to "coach up" the students sufficiently well to be able to pass the test or final examination. So regarded, is the teacher acting under such conditions far removed from a crammer?

But the practical question is, does the final examination afford any reliable test of adequate knowledge of the law?

I showed in 1895 by concrete examples that it does not. In one case an Oxford student had taken his degree in law, passing in the fourth class, but he had broken down in Roman Law. In the beginning of November, 1894, he went to a skilful "coach," and after one month's "coaching" he passed a "satisfactory" examination in the subjects in the curriculum, including Roman Law. The

other example was even more remarkable. He also was an Oxford man. He had obtained his Science Degree in the summer of 1894. He had attended no Law Lectures. He began to read for the Bar in October, 1894, and in December he passed his examination in Roman Law. In April, 1895, he passed his examination in Constitutional Law and Legal History. He then began to read for his examination in the whole field of English Law, from Common Law and Equity to Real Property Law and Criminal Law and Procedure. In two months he "satisfactorily" passed! The fact is, although the members of the Council may not know it, that under the existing system students rely far more upon the "Bar Examination Guide" and similar publications, and upon the "cramming" of the able and ingenious gentlemen who edit them, than they do upon the knowledge they derive from either readers or assistant readers. No doubt the difficulty of the "crammer" occurs in most branches of teaching, but it can largely be counteracted by a greater use of the catechetical system and by bringing into debate in class the subjects of the lectures, and by the discussion of decided cases involving principles.

I say then that the system is bad and must be remedied. It is not creditable to the profession or to the Inns of Court, and the profession cannot be too strongly reminded that they possess exclusive rights of audience and of office, the continuance of which can only be justified by superior attainments. As to the other branch of the profession matters are, so far as London is concerned, even worse. Lectures there are none, but there is a kind of tutorial instruction by post. In some of the provincial towns, for example, Liverpool, Manchester, and Birmingham, the local Incorporated Law Societies provide lecturers, but still it is the "crammer" who is generally relied on to pull the student through.

I recur to the question, how can the Law Faculty in the proposed Teaching University best be utilized? I do not prejudge the question, whether, as recommended in 1846 and in 1855, by powerful Commissions, and as pressed upon Parliament in 1872 and 1877 by high authority, the best solution is not the formation of the Inns of Court into a great School of Law or Legal University, but it must be confessed that public opinion, even in the profession, is lethargic, it takes little heed of what, after all, is a matter of the gravest public concern—namely the training of the men who are to be its judges at home and in its wide dependencies abroad.

But, at all events, let it be determined to make the best use in the interests of Education of the Law Faculty in the new University. Let the Inns of Court make it their own, but not exclusively their own. It would be a misfortune if it were left wholly in their hands. In purely professional management there is at least a danger that a spirit of narrowness may creep in. Let the Inns of Court, according to their means, supply the funds to secure teaching ability of the highest order obtainable, and let the policy be, not to discourage but to encourage the creation of a class who will make teaching of the law and its cognate subjects not an accident in, but the business of, their lives. The Faculty must be, at least, as high as those of the older Universities. As to these, I confess I share the doubt which has been expressed whether it was wise, in the general interests of Education, to allow the B.A. degree to be taken in law. The danger is that it may interfere with that general liberal Education which ought to be the foundation on which is built a Legal Education, and which, as Edmund Burke long ago pointed out, is necessary if we would avoid that contraction of mind which the study of our law has a tendency to cause. At the same time I think that the theoretical and historical

teaching of law (including Constitutional Law, Roman Law and International Law) can be well carried out in Universities as part of a liberal system of Education, and in every case ought to precede the practical teaching of our own Municipal Law as it requires to be taught for professional purposes. I think, as regards these earlier branches of study, the Inns of Court while requiring to be satisfied that the teaching is good and thorough, ought when they are so satisfied, to be liberal in accepting the *testamur* of teaching authorities outside their own control.

When we come to the teaching of Municipal Law for professional purposes I doubt whether any existing Faculty in any University, as now constituted, can effect that object satisfactorily, but I see no reason why much may not be accomplished in the case of the new University if only the Inns of Court take kindly to it and assert that control which their important position entitles them to have. Nor is it to be lost sight of that after all that teachers in the schools can do, there is still wanting for the full equipment of the barrister a *practical* acquaintance with the forms and machinery of law and of litigation which can only be satisfactorily acquired in the chambers of men in practice. My own experience is that six months in a solicitor's office and six months in the chambers of a practising barrister are more useful than a year spent in the latter. It will be for the Inns of Court to determine whether this experience ought to precede call to the Bar, or whether it may not be relegated to that period of inaction which usually marks the earlier years in the life of a barrister.

It is not my object in these words to pronounce judgment as to what ought to be done. I have not sufficient knowledge or experience. But I do say that things, as they are, are in the highest degree unsatisfactory: that the opportunity is at hand which, wisely used, may enable much to be done

in the way of improvement, and that it is the duty of all interested in the question to see that the opportunity is not missed. In a word, my object is to suggest that all friends of Legal Education (including the Council of Legal Education) should promptly take counsel together.

I have not overlooked, though I have not mentioned, the special considerations which affect the Education of students who desire to become solicitors. To some extent the lines of Education for both branches of the profession may be found to be co-incident ; when they separate special difficulties arise. I believe the heads of the Incorporated Law Society are ready and willing to join in any practicable scheme which will improve the Education of their students, and thus raise the general tone and standard of the profession.

Finally, I desire to make two points clear :—(1) That in any steps to be pursued it is desirable that the lead shall be taken, if not by, at least in co-operation with, the Inns of Court, and in co-operation with the Council which, in matters of Legal Education represents the Inns of Court, and (2) that it is not suggested that the powers of the Inns of Court as to calling to the Bar shall be in any way touched. With the Inns will rest, as now, the responsibility of determining the ultimate conditions of call and the right to refuse to call on such grounds as to them seem right. It need not be added that the disciplinary authority of the Inns does not come into this discussion.

RUSSELL OF KILLOWEN.

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## II.—THE ATTORNEY IN THE POETS.

**T**HE attorney enters the realm of poesy with a bound. Long neglected as a theme for a song, it is upon a throne he is first descried by the poets. True, it was alas! the throne of dulness, but at least among the dunces Attorney Tibbald was monarch. In the first edition of the "Dunciad," the Goddess of Dulness declared :—

"I see a King! who leads my chosen sons  
To lands that flow with clenches and with puns;  
Till each fam'd theatre my Empire own;  
Till Albion as Hibernia bless my throne!  
I see! I see! then rapt she spoke no more,  
God save King Tibbald! Grub-street alleys roar."

Thereafter attorneys were long to be denounced by the poets, denounced in good set terms for their crime of attorneydom. But poor Theobald was doubly exposed to attack: he not only followed the law, but he wrote. Generally he wrote badly, but one thing, to his own undoing, he did well—did better than Pope himself. His edition of Shakespeare succeeded, and deserved to succeed, better than Pope's own. This was his offence. That his original plays were bad was to Pope but a happy accident; they were sticks to beat him with; and his attorneydom and his poverty were additional weapons furnished by chance. If Pope had cared to analyse the deteriorating effect of the profession upon his verses, the damage done to Theobald's practice by his leaning to verse, we might have some illuminating couplets on the relation of law and literature. But Pope was too angry for analysis; he threw the first stone that came to hand at the hapless man. The Queen of Dulness, he said, looked with pride

on all the dull, surveyed with pleasure Daniel and Euseb,  
Blackmore and Phillips, Tate and Dennis.

In each she marks her image full expres't,  
But chief in Tibbald's monster breeding breast.

It was Theobald's dulness, then, that was the main object of attack. Pope sneered at Theobald because he was "supperless" and poor; he flung "attorney" at him as a term of abuse; but the epigram "inscribed to Attorney Tibbald," "on Mr. Moore's going to law with Mr. Gilliver," never would have immortalized the writer.

Once in his life Moore judges right :  
His sword and pen not worth a straw,  
An author that could never write,  
A gentleman that dares not fight ;  
Has but one way to tease —by law.  
This suit, Dear Tibbald, kindly hatch ;  
Thus thou may'st help the sneaking elf ;  
And sure a printer is his match,  
Who's but a publisher himself.

Pope himself had many ways of "teasing," but he did not disdain to tease by law. Perhaps he did not really dislike Tibbald the more because he was an attorney. At least, his malice found but one further means of annoying him. Having declared him King of Dulness, the only other injury in his power was to dethrone him; and this he did.

In his preface to the edition of 1743, Pope declared that he had revised the piece "where finding the style and appellation of King to have been given to a certain pretender, pseudo-poet, or phantom of the name of Tibbald, and apprehending the same may be deemed in some sort a reflection on majesty, or at least an insult on that legal authority who has bestowed on another person the crown of poesy, we have ordered the said pretender, pseudo-poet or phantom, utterly to vanish and evaporate out of this

work." So Theobald, the attorney, disappeared, and the righteous condemnation by poesy of all his class was for a time deferred.

But if Pope's animosity against Theobald was merely personal, the general voice of the poets was raised against attorneys as a class. To most of the singers a personal grievance was needless, they felt sufficient bitterness against the whole of the profession to barb their wit. All the professions are, of course, fair mark for satire; every parson is a hypocrite, every doctor a quack, but most of all and with most conviction, the censors declare that every lawyer is a rogue. Ned Ward, himself one of the poets pilloried in the "Dunciad" (and as he plaintively said without provocation on his part), presented this view. In "A journey to H——, or a visit paid to the D——," he pictured all classes brought to the bar of hell for judgment: clergymen, doctors, barristers, attorneys, poets, pamphleteers, printers, drunkards, gluttons and the rest. "Hell's Attorney-General" stated the charge. The Barristers were corrupt and acted only for fees, the Clerks of the Court, "the lesser scribes that do the greatest hurt," promoted litigation. This charge he pressed at length, then rested.

B'ing thus refresh'd, he turn'd his sawcer Eyes,  
And to th' Attorneys thus himself applies,  
You, who in times of old did Ink-horns wear  
In Leathern Zones, and Pens in twisted Hair,  
Whose Locks were comb'd as lank, and cut as short,  
As best should seem the pleasure of the Court,  
Who now on Earth as num'rously abound,  
As Rooks and Magpies in a new-sown Ground :  
Then turning to the Judge, he cries, my Lord,  
And thus runs o'er their Crimes upon record ;  
These by foul Practice and Extortion thriv'd  
And beggar'd half the Country where they liv'd ;  
Reviv'd old Discords, kindl'd up new Flame,  
And sow'd Contention whereso'er they came,



The Purses pick'd of each laborious Slave,  
 Who plough'd and thrash'd to feed some rooking Knave.  
 Buoy'd up with hopes he should victorious be  
 Would sweat and toil a week to earn a Fee.  
 Then to next Market ride before his Dame,  
 And give his Scribe, with scraping Leg, the same ;  
 Who bids the Booby Client cheer his Heart,  
 And haughtily does bad Advice impart,  
 Fear not, says he, I'll make the Rascal smart ;  
 But when his Purse had yielded up its Store,  
 His Cause proves bad, if he can bleed no more :  
 You told me wrong, did several things misplace,  
 Agree, agree, it proves an ugly Case.  
 Thus, by long Bills, stuff'd with unlawful Fees,  
 They tax'd the Farmer as themselves should please :  
 Improv'd litigious Suits by ill Advice,  
 Eat up full Barns and Acres in a trice,  
 And plagued the sinful land, like *Egypt's* Frogs and Lice.  
 As they from Leathern Belt to Sword arose,  
 And from a rural Grey to Town-made Cloaths.  
 The greater value on their Pains they laid,  
 The more impos'd the Client still obeyed,  
 And scrap'd and bow'd more low at ev'ry word he said.

The sentence passed on these offenders by the Chief  
 Justice would have delighted Jeffreys.

Amongst old Hags and Furies shall you live,  
 There scratch and claw, and in confusion fight,  
 Till Hell wants Darkness, and the Heavens Light ;  
 There shall you strive to mitigate your Pain,  
 And reconcile your Foes, but all in vain.  
 Furies shall scourge you with Scorpion Rods,  
 Beneath the reach of Mercy from the Gods,  
 Thus dwell involved in Night, eternally at odds.

But the publican poet recognised that some of the harm  
 done by attorneys was the fault of persons practising yet  
 unqualified, whose admission to the ranks of attorneys was  
 due to the neglect of those ancient laws which required  
 proper education and examination as a preliminary to

practice. The attorneys themselves had long recognised this. "The Compleat Solicitor," in 1683, had remarked that uneducated and dishonest men were here allowed though quite unqualified to conduct law suits. "'Tis by the means of these cheating and devouring caterpillars that the honourable Professors of the Law are so often cryed out upon for bribing and taking excessive fees." But the abuse lived long, and towards the close of the century the attorneys were still compelled to urge their grievance with emphasis in the ear of Parliament. These miscreants, Ward said, were not really attorneys, but—

A spurious sort  
Of Pettyfogs, meer Locusts of the Court,  
Who often help the former to deceive,  
And eat up what the bigger Vermin leave.  
Some by their Shop-board looks were Taylors bred,  
But broke, and on their Backs had scarce a Shred ;  
Not only in their Lives, but Looks, were Knaves,  
Litigious from their Cradles to their Graves.  
Vers'd in these Querks, they felt before they saw,  
After long Troubles did themselves withdraw,  
From making Sutes of Cloathes, to manage Suits of Law ;  
Well knowing it requires an equal skill,  
To make a Lawyer's or a Taylor's Bill.  
Amongst this paltry Crew were Ten to One,  
Bred up to Trades, but by the Law undone :  
And thus distress'd, most equitably sought  
Relief from that which had their Ruin brought :  
Or else resolved, from being basely us'd,  
T' abuse the Law, by which they'd been abus'd,  
So the poor Wretch, who Witchcraft has endured  
If once she claws the envious Hag she's cur'd.  
Some in Frize-coats, strait Wigs, and flapping Hats,  
Great Beards, and dirty Hands, like Counter-Rats,  
With Looks undaunted, at their Heels a Straw,  
Bold Teasers and Tormenters of the Law.

In "The History of the London Clubs" Ward afterwards expressed a similar view, and it was not only the law which

suffered from the intrusion of unqualified men. Medicine was in as bad a case.

Of all the Plagues with which our Land is curs'd,  
 The Frauds of Physic seem to be the worst,  
 For tho' the Law, 'tis true, abounds with weeds,  
 And from Astrea's Rules too oft recedes,  
 Yet those keen Foxes of such sundry sorts,  
 Who hang in swarms about her awful Courts,  
 By their Male Practice and Prolix Debates,  
 Can only hurt our Pockets and Estates.  
 But baneful Quacks, in Physick's Art unread,  
 To Weaving, Cobling or to Tumbling bred,  
 Or else poor Scoundrels, who for Scraps and Thanks,  
 Swept Stages for their Master Mountebanks,  
 Then to the World destructive Slops commend,  
 And do their poys'nous Cheats to life extend,  
 By vain pretences pick the Patient's Purse,  
 And with sham Med'cines make 'em ten times worse.

Another general condemnation was to be found in the *Gentleman's Magazine*. In "The Honest Countryman's Litany" (1734) we read:—

From Spirituals courts, citations, and libels,  
 From proctors, apparitors and all the tribe else  
 Which never were read of yet, in any Bibles.

*Libera me !*

From bayliffs, attorneys and all common rogues,  
 From Irish nonsense, their bogs and their brogues,  
 From Scot's bonny clabber, their clawing and shrugs.

*Libera me !*

But this gentleman, like Ned Ward, denounced most people; he was a good hater in more than the Johnsonian sense.

E. B. V. CHRISTIAN.

(*To be continued.*)

### III.—THE LAND TRANSFER ACT, 1897.

**T**HE Land Transfer Act of 1897 marks an important though not conclusive step in the controversy which has for more than a generation been carried on between the advocates of registration of deeds such as prevails in Middlesex and Yorkshire and the advocates of registration of title as embodied in the Land Registry Act, 1862, and the Land Transfer Act, 1875. Registration of deeds (that is the preservation in a public office of either a full copy of every deed affecting land, or a short note of its effect) has been advocated in this country from a very early date, and has been from time to time embodied in legal enactments—some general in their application, as in the requirement that deeds of bargain and sale should be enrolled—and others local, as in the cases of Middlesex and Yorkshire. But it never has been successful—and where permanent, as in the local instances just referred to, it has wholly failed to make converts and to lead to the extension of the system which those local acts established. Registration of title (that is the completion or recording in a public office, and by a public official, of every transaction affecting land) is a comparatively modern idea—which has never taken root here, and only to a very limited extent in any English-speaking race—but the insistence with which it has been urged, and the fondness in the present age for novel views, as well as the increasing belief in the virtue of Government interference in private transactions, has brought it of late years into great prominence.

But the arguments in its support have not been sufficient to wholly convert the Legislature. All that the Act of 1897 does is to enact that any county or part of a county in England or Wales which is willing to try the experiment

may allow or apply for the introduction within its area of a system of compulsory registration.

The Act in its introductory sections adopts the principle of a real representative, and provides that on intestacy real estate shall vest not directly in the heir but in the administrator, and where the late owner has left a will, shall pass to the devisee only after assent by the executor or administrator with the will annexed. Such a provision is essential to a system of registration of title—and has advantages even under the existing system of conveyancing—though it will, especially in small properties, add somewhat to the cost of transmission on death, for probate of a will or administration of an intestate's estate, will in all cases be necessary before the devisee or heir can enter upon his inheritance.

The chief importance, however, of the Land Transfer Act, 1897, is in the introduction, under many safeguards, of compulsory registration of title.

The existing system of conveyancing by private deeds prepared or approved by the landowner's solicitor and retained in his own custody, has grown up and been perfected by centuries of experience, and in its forms preserves the history of land tenure in this country; of the constant endeavour by Parliament to ensure publicity in dealings with land; of the dislike of landowners to have their family transactions known; and of the successful devices of lawyers to effectuate their clients' wishes. But even in its most perfect state, conveyancing by deed merely preserves evidence of title, and the interest of the landed proprietor and his power to dispose of his land must be ascertained by deduction from antecedent documents, often of many years' date. At no time can a precise assurance, binding upon all the world, be given that a named proprietor is the unquestioned owner of a specified piece of land. Consequently on every transaction a complete investi-

gation of title for not less than forty years should in theory be made, so that the purchaser or mortgagee may be satisfied that the previous investigation has been sufficient and that the right conclusion has been drawn. In practice this repeated and lengthy investigation is seldom undertaken, and in most cases a purchase deed dated fifteen or twenty years ago and followed by possession, or a mortgage of even more recent date, is accepted as a good root of title, or is required by the conditions of sale to be so accepted. The risk in such a case—though it exists—is in most instances theoretical rather than practical, and might, as is the practice in America, be readily insured against. But such insurance has not taken root in this country, probably because the Societies by which it has been offered have usually been managed by a Board composed mainly of lawyers who greatly over-estimate the actual risk, and therefore hesitate to undertake insurance against it except at an excessive premium.

The existing system of conveyancing is found to adapt itself to all the requirements of the public—and has the great advantage of being worked in private by the solicitors of the parties, and without serious delay—since in most cases the period which intervenes between contract and completion is due to the convenience of the parties as to possession, change of tenancies, and the like. The old complaint of the needless prolixity and unintelligibility of legal documents has practically disappeared under the conveyancing reforms initiated by Lord Cairns and the introduction of a reformed scale of remuneration for solicitors.

Registration of title is theoretically a much more perfect and certainly more scientific system. The register professes to record the result—not evidence from which that result can with more or less accuracy be deduced—and, if carried out to its logical extent, it should shew at

a glance the exact estates and interests affecting the registered land. But this is impracticable except at a cost and inconvenience which are prohibitive. Lord Westbury attempted it in his Land Registry Act, 1862, which endeavoured to make the register a mirror of the title, but the Act, which never had more than a very limited application, proved a complete failure. The system introduced by the Act of 1875 and amended in 1897, is less ambitious. The register under these Acts does not profess to shew the actual owner of the land, but only the person who can vest in a purchaser for value a title to the registered land.\*

Registration of title under the Act of 1897, is only compulsory on sale, and a voluntary conveyance or assignment, transmission on death, or a mortgage is not within its provision. On a sale of freehold land, or, assuming that the rules will make the compulsory section apply to leasehold property, on an assignment for value of land held on lease having a term with more than forty years to run, or two lives to fall in, or on the grant of a lease for a similar term (which is treated as a partial sale), the purchaser or lessee will not until registration acquire the legal estate. The penalty is not very serious; for at present many purchasers do not acquire the legal estate, though they think they do; and it will not be surprising if in very many cases registration (unless found easy and beneficial) is disregarded and the old system of conveyancing adhered to.

Only freehold or leasehold land can be the subject of registration, and registration must be applied for, in the case of freehold land, by the owner in fee simple or by a person able to dispose of the fee simple, and, in the case of leasehold land, of the absolute interest in the term. Copyhold land cannot be registered under the Act, but a manor and the demesne lands held with it can be, as well as all incorporeal

hereditaments—as, for instance, an advowson. The term “land” has a wide significance and includes all hereditaments, corporeal and incorporeal, but registration cannot be made compulsory in the case of incorporeal hereditaments, or of mines and minerals apart from the surface, or of a lease having less than forty years to run, or fewer than two lives to fall in, or of an undivided share in land, or of freeholds intermixed with and indistinguishable from lands of other tenure or of corporeal hereditaments, parcel of a manor, and included in a sale of the manor as such.

Registration can be made with an absolute, qualified, or possessory title, but the last title alone is (to the limited extent already explained) compulsory.

These three kinds of title are exactly the same with respect to dealings subsequent to first registration, but the difference between them is nevertheless important. An absolute title to freehold land is only granted after a full investigation of all the deeds and documents of title in the applicant's possession, after advertisements in the *London Gazette* and other papers, and after hearing objections, if any, and when granted is good against all the world, omitting, in the case of each kind of title, occupation leases, rights of way and similar matters, most of which are visible or easily ascertained on enquiry on the spot. As under the Act of 1897 land not situate in a district in which registration of title is compulsory may be removed from the register, it is very possible that an absolute title may in such a district be applied for and obtained and the land be at once taken off the register, the owner then selling or dealing with his land with a clear title and without the intervention of the officials at the Land Registry. A qualified title is granted after a similar investigation and advertisements, and only on the request of the applicant, and when granted is good against all the world, except persons claiming under the qualification, that is, anterior to a specified date, or under a



particular deed, or on the happening of some contingency which may or may not arise. A qualified title is in fact the equivalent of most titles which under the ordinary system of conveyancing are accepted subject to conditions of sale prohibiting investigation prior to a given date, or the requirement of proof of heirship or failure of issue or the like. A possessory title is granted without investigation and simply on the production of the conveyance to the applicant or a statutory declaration by him accompanied by the last document of title (if any). When granted, it is good against all the world except persons claiming in respect of something existing or capable of arising at the date of first registration. Possessory title amounts to little more than a claim by a particular person to be entitled to dispose of the specified land. Theoretically a possessory title can never become absolute by mere lapse of time, since the first registered proprietor may have been a tenant for life or a leaseholder or a person with no real title; but in practice registration with a possessory title will after the lapse of twenty or thirty years be generally accepted as a sufficient root of title. Until the arrival of that period, a purchaser or mortgagee will have to investigate the prior title just as at present, but the necessity for such investigation will diminish in proportion as the date of registration becomes more remote.

Leasehold land can be registered with either of the three kinds of title—but under conditions somewhat dissimilar to those affecting freehold land. An absolute title to leasehold land can only be granted after proof of the title of the freeholder and of any superior landlord to grant the lease; a qualified title may, as in the case of freehold land, imply a blot on or defect in the title, or simply the existence of a covenant against assignment without consent, while a possessory title adds nothing to the validity of the assignment on which it is founded. The

application of the Act to land held on leases already granted will be of little value, since the freeholder's title will seldom be obtainable, and investigation of the earlier title to the lease will be necessary in order to see that the succession of covenants of indemnity against non-payment of rent and breach of covenant is complete; but in the case of leases granted after the order fixing a compulsory area has come into force, some simplification of subsequent dealings may result. The principal value of the Act will be in simplifying title to freehold land, which, if properly administered, it should do.

The system of registration of title has by the recent Act been greatly modified in order to make it more flexible and suitable for the public requirements. For instance, a certificate of title, whether to land or a charge, the issue of which was optional under the Act of 1875 and was not usually required, must under the Act of 1897 be issued, although if the applicant so desire, it may be retained in the register, and not only must all entries be noted upon the certificate, but no dealing with the land can take place on the register without its production, and no duplicate certificate can be issued until after the lapse of a prescribed time, the production of evidence satisfactory to the Registrar of the loss or destruction of the original certificate, and the insertion of a series of advertisements. Such a certificate is equivalent to the title deeds under the existing system of conveyancing, and its deposit with a banker or other person will create an equitable charge which can be absolutely protected by an entry on the register. To make it more available for this purpose, the certificate is to shew the price paid on every transfer for value, though, owing to an unfortunate omission in the wording of the section, the amount of charges from time to time created will not necessarily appear. The certificate will thus give much of the information which is now obtained by a cursory perusal

of the title deeds. In order to further facilitate the ready use of the land certificate or certificate of charge as security for advances, provision is made for giving notice to the Registry of its deposit at a nominal fee (1s.), in exchange for which an official acknowledgment of the notice will be given. This notice will be equivalent to a caution and will effectually prevent any dealing with the registered land without the knowledge of the person by whom the deposit is made.

Whether the new system can be made to work smoothly and satisfactorily will depend greatly on the rules now under consideration (which must create the machinery and practice of the Registry), and upon the fees authorised in the Registry (which since 1889 have been excessive), and even more on the spirit in which the rules are carried out. If the officials in command will realise that the Registry is made for the public, not the public for the Registry, and that it is to their interest as well as their duty to make the working of the Act convenient and expeditious, many of the objections entertained to the new system will disappear.

The essential difference between the old and the new system of conveyancing lies in the fact that under the ordinary system the estate or interest conveyed passes by the act of the parties, that is, by the execution of the necessary deed, whereas, under the new system, it passes by the act of the Registrar, that is, by his making an entry on the register. In other words, no dealing with registered land can be completed without the intervention of an official, an innovation which, until use has familiarised landowners with it, will certainly be distasteful and probably inconvenient, and a cause of delay. For it can scarcely be anticipated that officials, recourse to whom is compulsory, and who have no personal interest in the transactions which pass through their hands, will be as ready to adapt their forms of procedure to the requirements of special

cases as are solicitors whose professional success and reputation depend on their carrying out to their clients' satisfaction the business entrusted to them. Indeed officials who are the servants of the public cannot with propriety give precedence to one applicant over another, but must attend to applications in the order in which they are made.

Registered land can only be dealt with on the register according to official forms which must, in the main, be strictly adhered to. These forms, which will be under seal so as to secure the implied covenants incident to deeds as well as to give greater formality to the dealings with land, are in substance rather in the nature of authorities to the Registrar to make entries than of actual assurances, and however elaborate and well considered are the forms prepared for general use, it will frequently be found necessary to have a supplemental deed to record the actual bargain between the parties. In dealing with mines and minerals, or in settlements of landed estate, this must always be the case.

Besides the mere transfer or mortgage of land, which is a comparatively simple matter, provision has to be made for the protection of persons whose interests may be prejudicially affected, such as equitable mortgagees, or the holders of jointures or portions not yet vested in possession—the persons entitled to the benefit of restrictive covenants and the like. This is provided for by cautions, restrictions, and inhibitions. A caution is similar in effect to a *distringas* upon stock or shares, and may on proper evidence be entered on the register with or without the consent of the registered proprietor. It entitles the cautioner to notice of any dealing with the land affected by it, and to a short period of time during which he may take any steps that seem necessary to safeguard his interests. Once warned, the caution is spent, but it may be revived

from time to time. A restriction, as its name implies, either limits the power of the registered proprietor to deal with the land (as for instance by prohibiting a sale by a tenant for life unless the purchase-money is paid to the trustees of the settlement, or by prohibiting any dealing with land registered in the name of joint tenants after the number has been reduced to two or one), or imposes conditions on the user of the land if and when dealt with (as in the case of a building estate). A restriction is usually matter of agreement, though in some cases, as in the absence of any trustees of a settlement, it is the duty of the Registrar to enter such restriction as he thinks necessary for the protection of the beneficiaries. Once imposed, a restriction can only be removed on the Registrar being satisfied that it is no longer needed, or with the consent of all persons interested. An inhibition is similar to an injunction, and has the force of an order of Court. It is an adverse, if not a hostile, proceeding, and prohibits all dealings until further order, and can only be removed by order. Any person lodging a caution, restriction, or inhibition, without due cause, is, by the Act, made liable to bear any consequent cost or damage.

The leading principle of the registry, namely that the registered proprietor can effectually dispose of the land subject only to incumbrances appearing in the register, involves the practical abolition, as regards registered land, of the far-reaching effect of a *lis pendens*. For the mere registration of a *lis pendens* will have no effect upon registered land. To secure this a caution must be registered against the particular land to be affected, and cannot be entered generally against all land of a particular person, and this may lead to much hardship. If for instance a beneficiary has reason to believe that a fraudulent trustee has appropriated trust funds and invested them in the purchase of land the situation of which he

does not know, he can commence an action to administer the trust and follow the funds, and as against unregistered land, can by registration of a *lis pendens* prevent the trustee from disposing of his land otherwise than subject to the decree to be ultimately made. If, however, the land be registered, the trustee will be able to realise it as and when he pleases, and to abscond or make away with the proceeds. A similar difficulty will present itself in all cases of bankruptcy. At present the order of adjudication vests in the official receiver or the trustee all land belonging to the bankrupt, and the advertisement in the *Gazette* is sufficient notice to bind the land and protect the creditors. But, as regards registered land, this will not be so, and to affect it a caution must be lodged or a transfer registered, which will seldom be possible for a considerable time during which the bankrupt will be able to dispose of his interest.

The usual practice at present with regard to the completion of a purchase is that the parties and their solicitors (or frequently the latter only) meet on the appointed day at the office of the solicitor who holds the deeds. The conveyance and any supplemental deeds of reconveyance or covenant are produced for execution or are brought already executed and the purchaser or his solicitor is prepared with the purchase-money either in an approved cheque or in cash. Payment is made, the title deeds are handed over and the transaction is complete, subject to the subsequent registration of the conveyance in places where such a formality is necessary. Quite possibly some execution (perhaps by one out of three or four trustees), has not been obtained and the solicitors having confidence in one another give and accept an undertaking that this omission shall be made good, and the completion is not delayed on that account. If the transaction be the sale and purchase of a brewery or public-house, such under-

takings are almost always necessary, but as the title deeds are handed over, the risk is very slight.

Under the new system, completion to be completely free from risk must take place at the Land Registry, so that, simultaneously with the payment of the purchase-money, the purchaser's name may be entered on the register. In practice this will not be found possible, especially in cases in which the parties or their solicitors reside or practice at a distance, or in which, as on the transfer of public-houses, completion takes place late in the evening. Unless all the signatures are complete and properly identified, completion must stand over, for the Registrar cannot act on undertakings, and as the title will not pass until actual registration, there will be some risk in paying the purchase-money before all the papers are in order. Of course the purchaser can hold the land certificate, which will confer a certain protection; but the nature of this protection will not, for some time at least, be understood.

At the same time the difficulty is, perhaps, more formidable in theory than in fact. For no objection is made to paying for shares in a railway or other company against delivery of the share certificate and an executed transfer, although the transfer can only be completed by registration at the company's office. In most cases, these sales and purchases are carried out through responsible brokers—in whom confidence can be placed—and the Act of 1897, no doubt with a view to facilitate business and minimise the chances of fraud or personation, requires that all transactions on the register, unless conducted by the principal, shall be carried out by solicitors, who are officers of the High Court and amenable to its summary jurisdiction.

It may be doubted whether there is any real public demand for the experiment which is about to be tried, or any accurate understanding of its nature. Registration of

title is assumed to be a mode of cheapening the transfer of land, but it will not, for many years to come, have that effect. On the contrary, it must for the present add to it to some, though not necessarily to a great, extent. The cost of land transfer depends more upon the Government stamp duty of 10s. per cent. than upon the legal charges. It is also claimed that registration will prevent the suppression of deeds and so protect purchasers from fraud and consequent loss. This will be so, and frauds of the kind are unfortunately not infrequent, though much rarer than is sometimes asserted. But it must not be forgotten that registration offers great facilities for personation or mistake, and that while one kind of fraud may be prevented, other means are certain to be discovered. Forgery, fraud and personation are not unknown to railway and other companies, the shares of which are only transferable on a register. As a safeguard against these dangers, notice of every instrument lodged for registration is to be given to the registered proprietor and the registration is not to be completed until after an interval of three days—while, as an additional precaution, a proprietor may give two addresses (*e.g.*, at his own residence and at his solicitor's office), to each of which notice must be sent. This should greatly diminish the chances of successful forgery, fraud, or personation.

The actual transfer being the act of the Registrar, it seems but reasonable that the Government, whose officer he is, should bear the consequences of any error or mistake which he may make. Nothing of the kind, however, was provided by the Act of 1862 or by that of 1875, but as resort to the machinery of those Acts was wholly voluntary, the necessity for an insurance fund was not so obvious. By the Act of last year indemnity is provided for any person suffering loss by any error or omission made in the register, or from any entry made or procured by or in pursuance of fraud or mistake, provided that the sufferer has not caused



or substantially contributed to his loss by his act, neglect or default. The words are somewhat restricted, and it may be doubted whether any claim against the insurance fund can be substantiated on the ground of the insufficiency or inaccuracy of an official search, since this is not an error or omission in the register, nor will it give occasion for any entry. There is a special provision protecting an innocent proprietor from being dispossessed of his land. In other words, the title which the register confers is not absolute, but guaranteed, and a title innocently acquired through fraud or forgery will only give a right to indemnity—not to the land wrongfully acquired. This provision, though essential, strikes at the root of the leading principle of registration of title, namely, that the register should be the only and the conclusive evidence of title, and may have very important consequences. For it may, in some cases at all events, be necessary for a purchaser who is buying a house or an estate for occupation to insist on proof that all the links in the chain of title subsequent to the first registration are genuine, otherwise he may find that he has acquired not the property for which he has bargained, but merely a right to compensation for its loss. This will have to be carefully considered by anyone about to enter into a contract for purchase, since in the absence of stipulation to the contrary a purchaser will under the provisions of the Act be precluded from requiring any other evidence than can be obtained from an inspection of the register, or of a certified copy of or extract from the register, coupled with evidence of the discharge of registered charges and incumbrances, and, if the land has been registered with a possessory or qualified title only, evidence of the title prior to registration or explaining the qualification.

Notwithstanding that land has been placed on the register, future dealings need not be carried out through its agency,

but may be effected by unregistered deeds, protected if thought necessary by caution or inhibition, and if the inevitable delay and friction incident to officialism, however enlightened, prove intolerable, this alternative will be largely resorted to. In many other ways the necessity for registration can, if thought expedient, be avoided. For instance, inasmuch as the only penalty for non-registration on sale of land within a compulsory district is that the purchaser will not acquire the legal estate, no purchaser of an equitable interest, as, for example, a portion of a large estate subject to a trifling mortgage which is not released, need register his title or will gain any advantage by doing so. Or the legal estate may before sale and consequent registration, be vested in a corporation upon trust for the persons entitled thereto, and no land held under such a title need be registered at all. Several other modes of evasion will suggest themselves to any practising lawyer, who bears in mind that registration cannot be made compulsory in the case of sales of reversions or undivided shares. The Act bears in every section evidence of the hesitation which the Legislature felt in introducing so sweeping a revolution, but the facility with which its compulsory provisions can be evaded, will doubtless constitute a great and ever present inducement to the official at the Registry to so conduct business there as to render evasion needless.

The County Council of London has consented that London shall be the area for the first experiment, and although it appears to be understood that only a portion of the County will, in the first instance be affected, the system will doubtless extend in due course over the whole of London. No other order establishing compulsory registration can be made for three years, and then only on the application of a County Council, which, unless the system be found very economical and convenient, is not likely to be made.

Land as and when brought on the Land Register will be exempted from the jurisdiction of the Middlesex Registry, and in proportion as land in Middlesex comes upon the Land Register will the work of the Middlesex Registry be diminished. The transactions arising in such an area as is now contemplated can be carried on at the present Land Registry in Lincoln's Inn Fields without additional offices and with but little, if any, additional staff, and, consequently, in the event of failure, there will be no demand for compensation for officials no longer required. The Act of 1897 expressly provides for the utilisation of the existing Registry, and on every ground it seems right and convenient that the first experiment should, as it apparently will, be made in Middlesex, or rather in that part of Middlesex which lies within the County of London.

The experiment will be watched with very great interest both by those who, like the writer, advocate, and those who oppose, registration of title. The arguments on either side are tolerably balanced, and nothing but the test of actual practice will prove whether the system can or cannot be made suitable to the requirements of the public. Certainly if it prove a success, conveyancing as between vendor and purchaser will in the course of a generation be very greatly simplified and cheapened, but whether these advantages will not be over-balanced by the introduction of officialism into all the transactions of life (which are by no means confined to sales and purchases) and the consequent delay and friction, can only be determined by experience. What is required now is that the system should be given a full and fair trial, and its benefits and disadvantages be carefully and impartially noted and weighed, so that the procedure which is thus shewn to be for the public advantage may be finally adopted. It is altogether impossible to have two opposed systems of conveyancing permanently in use.

BENJ. G. LAKE.

## IV.—COPYRIGHT REFORM.

**I**F the good old days could be recalled when obstruction was unknown, and Parliament had nothing particular to do and plenty of time to do it in, artists and men of letters might possibly prevail upon the House of Commons to settle down in a serious and workmanlike spirit to the task of consolidating and amending the law of copyright.

In these latter days, however, only the strongest pressure of public opinion will induce the representative chamber to concern itself with legislation of an unsensational character, out of which no party capital can be made or any party fight evoked, and on which no party recrimination can be indulged in. Reforms that are advocated merely in the interest of the community at large, or of some section of the community not possessing great political influence, are voted a bore by the representatives of the people, who are more than content to relegate the consideration of such matters to the serener atmosphere of the House of Lords, where perpetual and inevitable boredom is the condition of existence.

This, perhaps, is all as it should be. The overworked House of Commons, weary and jaded in the reaction consequent upon a surfeit of hard fights and brilliant party manœuvres, may be justified in relegating to the House of Lords such hum-drum tasks as are distasteful to a militant assembly. I say nothing against that view. A little boredom, more or less, in the gilded chamber or its committee rooms is all in the day's work. Let the dull House remain dull, and the fighting House be encouraged to stake out the political prize ring, wherein the party pets may perform to the admiration of an applauding senate, and a critical ring of bottle holders in the reporters' gallery.

That the peers should be employed to thresh out for the people the details of domestic legislation irksome to their own accredited representatives, and unsuited to the gladiatorial instincts by which those gentlemen are animated, is a proposition calculated to attract public favour; but the peers having performed their allotted task, it does seem to me that the House of Commons is under some slight obligation to their dull colleagues in another place, and ought in common fairness to devote some little time and attention to a review of the work done by the Lords. This, however, is not held to be part of the bargain. The Lords may propose as much as they please; they may take weeks in laboriously threshing out a question, the matter at issue may be a government bill, but the Commons will airily refuse to discuss their proposals, even for five minutes, and without the smallest compunction will settle down at once to the next gladiatorial display.

Take, for instance, the case of the reformatory and industrial schools. The House of Lords, recognizing that the treatment of neglected children, many of whom are tempted and even forced into crime, is a matter of some interest to the community, took a good deal of pains to consider and amend bills presented by a Minister of the Crown for the reform of those institutions. Year after year the Lords passed these bills with great regularity. Year after year with equal regularity the House of Commons, being fully occupied with more exciting and contentious business, refused so much as to look at them!

Authors and artists will do well to bear in mind the extreme difficulty of getting the House of Commons to take any interest in a subject so unprofitable from a party point of view as the law of copyright. Moreover, though the public at large have a kindly feeling for literature and the fine arts, they are never likely to get violently excited over the wrongs of their favourites. For the public are con-

vinced that the supply of books and pictures will under any circumstances be equal to the demand.

Amid this gloomy outlook it is satisfactory to note that the cause of copyright reform has recently gained a vigorous and distinguished champion in Lord Herschell, who has brought in a comprehensive measure which has passed second reading and stands referred to a select committee. Lord Herschell was a member of the strong copyright Commission that reported twenty years ago, and whatever may be the fate of his bill, his action is a guarantee that in a position of greater power and responsibility he will not shrink from pressing forward with all his might such amendments of the law as may still be needed.

At present the law is very much what it was in 1878, when it was denounced root and branch in scathing terms such as are more usually employed on party platforms during a hotly contested election, than in the sober pages of a document recording the responsible utterances of eminent statesmen and men of letters under the chairmanship of a Tory minister who is now a Tory Duke—the Duke of Rutland.

“The law,” they write, “is wholly destitute of any sort of arrangement, incomplete, often obscure, and even when it is intelligible upon long study, it is in many parts so ill expressed that no one who does not give such study to it can expect to understand it” (sect. 3).

Again we read, “The common law principles which lie at the root of the law have never been settled,” and the report proceeds to shew that the statute law is as bad in substance as it is in form.

Sir James Stephen, one of the Commissioners, made a digest of the law, which is printed in an appendix. This digest is interspersed with notes and comments, from which it clearly appears that in the opinion of the learned Judge the Legislature and the draftsmen have fallen into every

conceivable error, and committed every possible stupidity which can render an Act of Parliament a godsend to the lawyers and a source of trouble and confusion to the judges and the public.

Statutes are incorporated by reference, the drafting of many of them is stated to be "slovenly in the extreme," sentences of portentous length have been constructed, in the midst of which the draftsman, as Sir James Stephen remarked, "appears to have lost himself." Different branches of the law have been dealt with at different times and in different conditions of public opinion, so that arbitrary distinctions are common which it is impossible to defend. To crown all, some of the statutes have been drafted in astounding ignorance of the law they were intended to modify.

With regard to the Acts dealing with penalties for pirating prints and engravings, Sir James Stephen complained that they were "inexpressibly puzzling," and added, "I have compared the two Acts line by line, and am by no means sure that I have got the result correctly. The sense escapes in a cloud of words." One sentence of 55 lines in one Act qualifies in two minute particulars a sentence of 61 lines in the other Act.

"Copinger on Copyright" gives an interesting account of the evolution of the statute law. In 1556, about a hundred years after the invention of printing, we find the first trace of any interference by the State with regard to the right of selling books. In that year the Star Chamber framed an ordinance establishing the Stationers' Company, to which they gave the power of licensing, with the primary object of excluding heretical works from circulation, a matter next the heart of Queen Mary and her husband.

Other licensing ordinances were from time to time promulgated by the Star Chamber, till its abolition in 1640, and then the question was taken up by Parliament, which

at once issued an ordinance, not only prohibiting the printing of unlicensed books, but also rendering necessary the consent of the owner of a work to its publication. Parliament issued other licensing ordinances, and in 1662 passed a Licensing Act to the same effect as the ordinance of 1640.

So far then as the copyright of an unpublished work is concerned, Parliament recognized at an early date what would seem to have been previously the acknowledged common law doctrine, that the sole right of publication lay with the owner of the work.

The further question of whether there is now, or ever has been, copyright at common law in a work when it has once been published, is still the subject of controversy.

In 1679 an action (*Ponder v. Bradyl*) was brought raising this point. The cause of action was the printing of 4,000 copies of the "Pilgrim's Progress" of which the plaintiff averred himself to be the true proprietor, whereby he lost the profit and benefit of his copy. There is, however, no trace of the action having proceeded.

In 1681 and 1694 we find the Stationers' Company passing bye-laws as to the sole right of printing, in a form shewing they considered that copyright in a published work existed.

In 1709 a petition was presented to Parliament complaining that the "antient and reasonable usage," whereby the sole right of printing had been reserved to the owner of a work was broken through, and could only be secured by Act of Parliament. The common law right was alleged to be defective because a bookseller could recover no more costs than he could prove damages, and moreover, a remedy in damages only was asserted to be unsatisfactory, inasmuch as the defendant was always a pauper, no man of substance having ever so offended.



This appeal was speedily responded to; the statute of Anne was passed, the first of a long series of enactments destined to puzzle the Bench, to give employment to the Bar, and to exasperate litigants. Subject to certain conditions designed to protect the public from the possible rapacity of authors and publishers, the Act gave a copyright term of 21 years from publication.

Strangely enough more than half a century elapsed before the lawyers discovered the inexhaustible possibilities of litigation opened up by the Act. For 57 years it was assumed that a perpetual copyright in published works had always existed, and still existed in addition to the statutory right. Consequently, when the statutory term ran out it was the practice of the judges to grant an injunction under the common law for the further protection of the owners of copyright. But in the great case of Thomson's Seasons (*Millar v. Taylor*, 1766) it was eventually held by six judges to five that the statutory term was in substitution for and not in addition to any common law right that may previously have existed, and it would now seem to be the better opinion that no common law copyright exists in a published work even during the currency of the statutory term of copyright, and, therefore, every statutory requirement must be fulfilled before any copyright attaches.

The trouble in construing the statute of Anne arising from the failure of the draftsman to take the common law into consideration did not prevent the Victorian draftsman from falling into the same error. With regard to the Act of 1842, which still holds the field as the principal Act now regulating copyright, it is a moot point whether it does or does not take away the common law right previously subsisting of a dramatic author to prevent, without any limit of time, the publication of a play acted in public but not printed. And in the Act of 1862, the first to give fine

art copyright, the draftsman created some trouble by reciting in the preamble that authors of paintings and other works of fine art "had no copyright," oblivious of the common law right forbidding the publication or copying of unpublished pictures or drawings.

When we remember that Parliament has passed 47 copyright Acts, of which 19 are now wholly or partially in force, and that a good deal of this mass of legislation is of a piece with the specimens that have been alluded to, the subject, it will readily be seen, is one urgently demanding attention.

Various attempts have been made during the last 20 years to give effect to some of the recommendations of the Royal Commission, but with the exception of two Acts dealing with musical copyright, the second of which was passed to correct a monstrous blunder in the first, and an international Act necessitated by the Convention of Berne, absolutely no change in the law has been effected.

Putting aside the recommendations as to international copyright, which have been more than carried into effect by that Convention, and colonial copyright on which I do not propose to enter, the principal alterations of the law insisted upon by the Commissioners may be summarised as follows :—

The life of the author and 30 years after his death, was substituted in the case of literary stageright and musical copyright for the present term of 42 years from publication, or the life of the author and seven years after his death, whichever term should be the longer.

In the case of sculpture the same term of life and 30 years is substituted for the present term of 14 years, followed should the sculptor be alive at the end of it, by another term of 14 years.

In the case of paintings and drawings the same term of life and 30 years, and in the case of photographs a term of 30 years is substituted for the present term, applicable alike

to paintings, drawings and photographs, of life and seven years.

In the case of prints and engravings 30 years is substituted for the present term of 28 years.

In the case of magazine articles three years is substituted for 28 as the period during which separate publication by the author is prohibited. The term of life and 30 years for literary copyright is the same as that obtaining in Germany, and shorter than that in force in any other European country except Greece, Holland, and Belgium. The Commissioners preferred a term ending at a fixed period after the death of the authors rather than from publication, on two grounds. First, because the date of an author's death is more easily ascertainable than the date of publication, and, secondly, because under the latter system earlier and probably inferior works enjoy longer copyright than the more mature examples of an author's genius.

A majority of the Commissioners reported in favour of making abridgments a breach of copyright. Sir James Stephen, however, disagreed on the ground that the question of whether any given abridgment is substantially an original work or not was capable of being determined by a court of law in a more or less satisfactory way, and that any statutory rule on the subject was likely to lead to great practical difficulties, and would be liable to evasion.

The Commission recommended, with a saving of existing rights, that the special perpetual copyright vested in the principal universities and some of the schools should be abolished.

As to dramatic and musical copyright the Commissioners reported that they had carefully considered the statute law, but from the way in which certain Acts of Parliament had been framed and incorporated by reference, considerable doubt arose in their minds on various important points connected with those subjects.

They recommended that the present law, which they understood to permit a dramatic piece or a musical composition to be publicly represented without the consent of the author, should be repealed, and that the printed publication of such works should give dramatic or performing rights, and that the public performance should give literary copyright. Also that the author of the words of songs as distinguished from the music should have no copyright in representation or publication with the music except by special agreement.

The Commissioners next considered the burning question of the dramatisation of novels, which has lately come very much to the front. Some conundrums in connection with this subject have been solved in court by Her Majesty's judges, others no less interesting and perplexing remain unsolved.

It seems to be fairly well-established that the dramatisation of a novel is not an infringement of copyright unless the author of the novel has previously published it in the form of a drama; but as it has been also held that though a drama taken from a copyright novel may be written and acted, it cannot lawfully be printed, and as the Lord Chamberlain requires a printed copy before the play can lawfully be performed, there are considerable practical difficulties to be faced by the piratical playwright.

It has been suggested that he might buy a few copies of the novel and construct a print of his play with the aid of scissors and paste—but he would have to stick very closely to the text.

The Commissioners recommend that the right of dramatising a novel or other work should be reserved to the author. "This change," they observed, "would assimilate our law to that of France and the United States, where the author's right in this respect is fully protected."

They add, "we are disposed to think that the right of dramatisation should be co-extensive with the copyright. It has been suggested in the interest of the public that a term, say of three or four years, or even more, should be allowed to the author within which he should have the sole right to dramatise his novel, and that it should then be open to anyone to dramatise it. The benefit, however, to the public in having a story represented on the stage does not appear to us to be sufficient to outweigh the convenience of making the right of dramatising uniform in its incidents with other copyright." As to lectures, the Commissioners say, "The present Act of Parliament, which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection, lectures require copyright of two kinds, the one to protect them from printed publication by unauthorised persons, the other to protect them from re-delivery of a lecture without leave as well as publication by printing, though this prohibition to re-delivery should not extend to lectures that have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30 years after his death. . . . The author should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless before or at the time when the lecture is delivered he gives notice that he prohibits reporting. . . . We do not suggest any interference with the exception made in the Act as to lectures delivered in Universities and elsewhere wherein no statutory copyright can be acquired" (sects. 82—5 and 87).

As to sculpture, Sir James Stephen confesses that he is fairly puzzled in the attempt to interpret the statute (54 Geo. III., 56). One section he observes "is a miracle of intricacy and verbosity. It also contains an 'of' which

may be a mis-print, as it seems to make nonsense of several lines, and a most puzzling 'such' of which I have given a conjectural interpretation."

The Commissioners recommend "that every form of copy, whether by sculpture, modelling, photographs, drawing, engraving, or otherwise, should be included in the protection of copyright.

"It might be provided that the copying of a scene in which a piece of sculpture happened to form an object, should not be deemed an infringement, unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture" (sect. 99).

The Commissioners, after observing that the present law on the subject is doubtful, recommend the grant of copyright in copies from statues in which no copyright exists. As to paintings, drawings, and photographs, the Commissioners comment in severe terms on the existing law whereby in a transfer by the artist in the absence of an agreement giving the copyright to the artist or the transferee, neither of them get it, and the copyright in the work falls to the ground.

The Commissioners were unanimous in holding that in the absence of agreement either the artist or the transferee should get the copyright, and by, I believe, a bare majority, they overruled the unanimous desire of the artists, and decided in favour of the transferee. The Commissioners were greatly dissatisfied with the law as to registration. As regards machinery, they thought the task of registration should be transferred from Stationers' Hall either to the British Museum (the authorities of which they considered might well combine registration with their present obligation to give receipts for books deposited) or to some Government Office. The trustees of the British Museum are singularly stubborn when approached on this subject, and seem to resent as an insult any suggestion

that they should be asked even to take the matter into consideration. Their attitude is thus commented upon by the Commissioners: "We cannot but express our regret that the trustees decline to accede to our request that one of their body should appear before us. It is probable that a full explanation of our views and a personal discussion might have removed the difficulties which they felt on this point."

Under the present law, as regards literary copyright, registration after infringement is sufficient to sustain an action, whereas, with regard to artistic copyright, an action for infringement previous to registration cannot be sustained.

The Commissioners recommend that the law as to artistic copyright should be extended to literary copyright. They also recommend that the owners of copyright should have the power to apply to any peace officer to seize unlawful copies without warrant, and should have a summary remedy to obtain damages.

Such were the principal recommendations of the Commissioners outside the range of colonial and international copyright, subjects which I do not propose to discuss. For international copyright has obtained a fair share of attention, and is regulated not on the whole unsatisfactorily by the Berne Convention, by the American Act, and by our treaty with Austria; and colonial copyright raises questions that I do not wish to incur the responsibility of discussing.

As regards the recommendations I have summarised, it is not the fault of the Commissioners that the Legislature has during twenty years done nothing at all. In 1878 Lord Herschell introduced, while in the Commons, a consolidating and amending bill, and in the following year the Chairman of the Commissioners took the same course. In 1882 a Fine Arts Bill passed second reading in the Commons, but did not get through committee stage. In 1891 I introduced a long and carefully considered bill, the product of much labour on the part of authors, artists, and

publishers, for the drafting of which Mr. Underdown, Q.C., and Sir F. Pollock were largely responsible. The present Lord Chancellor, then on the Woolsack, allowed the bill to be read a second time *pro forma*, but only on condition that it went no further. Lord Herschell took occasion to observe that "some years ago, just after he had entered their lordships' house, he himself was prepared to take up the question, but he was told that the Board of Trade were going to introduce a bill. Session after session had passed since then, and still their lordships were without any announcement that the expected bill was about to see the light. Everybody admitted that the law ought not to be allowed to stand as it was, and no adequate reason had been given why an effort should not be made to alter it." Six years passed, and still neither government, Liberal or Conservative, made any sign.

Last year the Society of Authors took the matter up, and after consulting the Publishers' Society and the Copyright Association, entrusted me with a short bill, which in its main features had the approval of the two latter bodies. This bill dealt exclusively with literary copyright, and purported to amend only some of the most serious defects in the law. It passed the second reading, and was referred to a select committee composed of the following peers: Lords Knutsford, Hatherton, Tennyson, Hobhouse, Thring, Farrer, Welby, Pirbright, and myself. The assistance of Lord Farrer I held to be of special value not only because of his great reputation and intimate knowledge of the subject from long experience at the Board of Trade, but also because he could be relied upon to champion in the committee the interests of the public and to present their case with admirable force and eloquence.

The committee held several meetings and examined several witnesses, and the little bill before them gradually became more and more attenuated, with the object of



relieving it as far as possible of contentious matter and so give it a chance in the Commons, and when at last, very near the end of the session, it passed the Lords, it dealt only with (1) translations, (2) magazine copyright, (3) lectures, (4) abridgments, and (5) the dramatisation of novels.

As regards the last four of these subjects the proposed amendments of the law substantially carried into effect the recommendations of the Commissioners as above set out, but as regards translations the proposals of the bill went considerably further than those of the Commissioners, further even than the Convention of Berne. After most careful consideration the committee came to the conclusion that on the whole the interests of the public would be best served by leaving the control over translations unreservedly in the hands of the author of the original work, consequently the committee did not think it wise to attach any conditions at all to the right of an author to prohibit the translation of his works, and making a clean sweep of the conditions imposed by the Berne Convention, the first clause of the bill simply enacted that translation should be an infringement of copyright.

The provision, had it become law, would not have had a wide application. The Berne Convention would still have applied to English translations of foreign works within its area, and similarly to foreign translations of English works, and that Convention, as modified in 1896, stipulates that if the author does not authorise a translation within 10 years after publication, his exclusive right shall cease. The clause in the bill would therefore only have applied to domestic translations within the British Empire—say, into one of the Indian languages. The adoption, however, of such a provision by the committee is significant of the drift of opinion, and we may hope that before long the Berne Convention will give authors a yet further power to prohibit translations.

The Society of Authors recognise the difficulty of inducing the House of Commons to devote any considerable time and attention to the law of copyright. Authors, like other people, must take what they can get, and in this chastened spirit they determined to accept in its entirety the verdict of the select committee on their bill, and instructed me to introduce it this session in the precise form in which it passed the Lords last year too late to be considered in the Commons. I had hoped that a bill of such very modest proportions and so well recommended, a bill, moreover, that I was assured last session had the good wishes of the Government, would have been allowed to pass again through the Lords in a few days, and long before this have gone to the Commons. But the Government have discovered difficulties that were invisible last session, and have stopped the progress of the bill. Meanwhile Lord Herschell, acting for the Copyright Association, has introduced a bill of formidable dimensions, and both bills stand referred to a select committee empowered to take evidence. The views of that committee will doubtless constitute another authoritative exposition of the necessity for legislation; such expositions have been accumulating by the ton, but the burden of all this documentary denunciation of the law of copyright, contributed by judges, authors, artists, publishers, commissioners and committee, sits lightly on the authorities at the Board of Trade.

What is wanted is a willing spirit on the part of the Government, and the surest—perhaps the only way to evoke that spirit—is to arouse public opinion to a due sense of the intolerable hardship and injustice inflicted by the present law on a body of men and women who are peculiarly deserving of our fullest sympathy and encouragement.

MONKSWELL.

## V.—MUNICIPAL LONDON.

**L**ORD SALISBURY'S intimation that the amendment of Local Government in London will before long occupy the attention of the Imperial Parliament, renders it a matter of some considerable importance for Londoners to appreciate the complex and defective system under which the Metropolis is at present administered. It is perhaps surprising that there should be any necessity for a description of the existing method of government, but it is a fact that the average voter in London is extremely ill-informed as to the functions of the various administrative bodies. This absence of interest and information has hitherto produced two unfortunate results. It has prevented in many cases men of position and intelligence, and in all cases women, from serving on local bodies, and it has left the administration of whole districts in the hands of a class who, apart altogether from the question of self-interest, are frequently incapable of adequately fulfilling the important public duties with which they are intrusted. The absence of general interest has, moreover, had the malign effect of depriving London of that measure of local municipal reform which has so beneficially affected the rest of England and Scotland, and which is now to be extended to Ireland. I propose therefore to set out here a brief summary of the method of distribution of administration in the Metropolis (other than the City of London), and to give a sufficiently accurate bird's-eye view of this complex and bewildering subject.

The term "Metropolis" is defined by the Metropolitan Management Act, 1855, to include the City of London and the parishes and places comprised in Schedules A, B, and C to the Act. By the Local Government Act, 1888 (sect. 40) the term Metropolis, as used above, is defined to be the

administrative county of London. Therefore this county comprises the City of London, the 80 parishes, and the eight precincts mentioned in the schedules. We will here consider these 80 parishes. Each of them has a popularly elected vestry, which must consist of not less than 18 (save in the case where there are not 18 persons qualified to serve) and not more than 120 properly elected persons. The election formerly took place in accordance with the special provisions of the Act of 1855, but it is now regulated by the Local Government Act, 1894, which still retains the minister and the churchwardens as *ex officio* members of the vestry. All persons shewing 12 months residence, or, whether they be male or female (including peers, women-householders married or single, male lodgers, and men possessing the service franchise) who are on the Parliamentary or County Council Register can vote in London vestry elections, and the Ballot Act, 1872, and the Corrupt Practices Act, 1884, are applicable, with certain modifications. By the Act of 1855 each parish with more than 2,000 householders is divided into wards, but each ward must not contain fewer than 500 rated householders, and there must not be more than eight wards in one parish. Elections take place each year in the month of May and one-third of the vestrymen in each ward or parish retire annually. This procedure is followed in the 80 parishes of Greater London each year. As soon, however, as we proceed to consider these parishes we find that they fall into two distinct classes. By the Act of 1855, 23 of these vestries were incorporated bodies with perpetual succession and a common seal, whilst the remaining 57 vestries were of an entirely different character. By the Act of 1855, as modified by the Metropolitan Management Act, 1862, these minor vestries were combined into 14 groups of vestries. Each of these groups elected a body called the district board, the members of

which were drawn by election, or rather selection, in each vestry from the various vestries of the group. This district board was an incorporated body of the same nature as the incorporated vestries. Thus, under the Acts of 1855 and 1862, there came into existence 37 incorporated local bodies in London which were the sanitary authorities of the various parishes and districts. The same procedure and method of administration is in force at the present time, save that the number of incorporated bodies has changed and the numerical representation of the various minor vestries on the district boards has, of course, automatically altered with variations of population. It will be useful here to note specifically the changes in number of incorporated vestries under Schedule A of the Act of 1855, and of incorporated district boards under Schedule B of the same Act. Their numbers, as we have said, were respectively 23 and 14. However, by 48 & 49 Vict., c. 33, Fulham District Board was dissolved and was replaced by the incorporated separate vestries of Hammer-smith and Fulham; by 50 & 51 Vict., c. 17, Westminster District Board became the united vestry of St. Margaret and St. John the Evangelist, and by the same Act, Battersea was taken out of the Wandsworth district and made an incorporated vestry; by 56 & 57 Vict., c. 55, Hackney District Board was dissolved and the incorporated separate vestries of Hackney and St. Mary, Stoke Newington, were formed; and by the same Act Plumstead was made a separate vestry. Hence there now exist 29 incorporated vestries, 11 incorporated district boards, and the Local Board of Health of Woolwich. This local board belongs for certain restricted purposes only to the scheme of Metropolitan Local Government. Woolwich is a Metropolitan parliamentary borough: it is a London County Council electoral division: it is included in the London School Board: but it is a Local Govern-

ment District governed by a Local Board of Health which was constituted in 1852 by 15 & 16 Vict., c. 69 (sects. 1, 2, 4), confirming a provisional order made under the Public Health Act, 1848 (11 & 12 Vict., c. 63). The Metropolitan Management Act, 1855 (sect. 238), assimilated in many respects this local board of health to the incorporated vestries of London, and the Public Health Act, 1875, which did not apply to the Metropolis, placed Woolwich in the Metropolitan area. The Public Health (London) Act, 1891, by sect. 102, applied to Woolwich the Public Health Act, 1875, and seven other public health Acts, save in so far as they are superseded by the Act of 1891, which also applies to Woolwich, with the result that that parish has wider statutory sanitary advantages than any other district in England, advantages of which, it must be assumed, the local board fully avails itself. The persons to be elected to, and the electors of the Local Board of Woolwich require the same qualification as in the case of the London vestries under the Local Government Act, 1894 (sect. 31). It seems clear that Woolwich should be wholly included or wholly excluded from the administrative county of London. Penge is another instance of complication. It is in the Lewisham District ; it has some indefinite relationship with the parish of Battersea, yet it is not in the London Poor Law area nor the London area of the Registrar-General, but forms part of the Croydon Union. The want of symmetry in the Metropolis, as shewn in these instances and in the various local Acts which regulate the functions of many of the minor vestries, furnishes one of the reasons why Londoners take so little interest in their local affairs. The average vestryman is utterly and absolutely ignorant of the statutory authority under which and through which he manages local affairs. He is in the hands of the vestry clerk and the clerk to the district board. In the case of

a district board, the clerk, in many instances, possesses absolute authority, for, in addition to his almost exclusive legal knowledge, the conflicting interests of the united parishes are necessarily determined by the weight of his opinion.

With reference to the local distribution of sanitary work in the Metropolis and the manner in which vestries which are not sanitary authorities are grouped, it is well to note that though the proportion of incorporated vestries to district boards is as 30 to 9, yet the 9 district boards include 47 parishes, that is to say, more than half the parishes of London.

It only remains to point out the manner in which the central municipal body—the London County Council—is formed. This body, which came into existence on April 1st, 1889, represents an electoral area identical with the area of the London Parliamentary Divisions as set out in the Redistribution of Seats Act, 1885. Each division of London that returns one member to Parliament returns two to the London County Council; the City of London returns two members to Parliament and four to the County Council, which, however, receives no representative from the London University despite the fact that the University is represented in Parliament by one member, and that the County Council is deeply interested and involved in technical educational questions on which the advice of a representative of the London University would be valuable. There are in all 28 electoral divisions which return to the Council 118 members. Of these the Tower Hamlets return 14 members; Islington, Lambeth, and St. Pancras eight members each; Camberwell, Finsbury, Hackney, and Southwark six members each, whilst eight electoral divisions return four members each, and the remaining twelve divisions two members each. It is perhaps worthy of notice that West Ham is not included

in the area represented by the London County Council. There can be little doubt that it ought to be so included if the same rule is applied to it that has been applied to other outlying portions of the administrative county as it now exists. The 118 elective members do not fully constitute the Council. In addition to the councillors there are 19 aldermen elected by the popularly elected councillors. Moreover, the chairman of the Council may be elected from outside the Council, thus making up, in this event, 138 members.

Having indicated the character of the various municipal bodies in Greater London, I proceed to give a bird's-eye view of their functions. In doing this it will be convenient to consider these bodies in their increasing order of importance, namely: (1) Minor Vestries; (2) Incorporated Vestries and District Boards; (3) London County Council. As soon as the related labours of these bodies have been indicated, without the introduction of confusing detail, it will be possible to realize the necessary lines of reform and the natural allocation of governmental functions.

First then as to the minor vestries of London. The popular supposition that these bodies are mere parochial debating societies without power is by no means accurate. It is true that in some cases these vestries have very little power; but it is also true that in other cases they are bodies of the most considerable importance. The following description of their actual and their possible powers will shew this. The minor vestry elects from itself a certain proportion of the members of the district board and consequently the effectiveness of the local sanitary authority depends entirely on the class of persons elected to the minor vestry and on the wisdom shewn by the vestry in choosing its delegates to the district board. The vestry has certain functions in connection with parish charities; it elects at least one of the churchwardens; it possesses certain duties, powers and privileges relating to the parish



church; it elects commissioners of baths and wash-houses and the burial board, where Acts necessitating such commissioners or board have been adopted by the parish; under sect. 33 of the Local Government Act, 1894, the Local Government Board can confer upon a minor vestry the appointment of overseers and assistant overseers, or the powers of overseers, or of a parish council. It is clear, therefore, that a minor vestry might be invested with very extensive powers, including the direct adoption of the Baths and Washhouses Acts, 1846—1882; the Burial Acts, 1852—1885; the Public Improvements Act, 1860; and the Public Libraries Act, 1892. As a matter of fact, certain of the minor vestries are already in possession of powers conferred on them by the Local Government Board in pursuance of the Act of 1894. In addition to the actual or potential powers above enumerated, many of the minor vestries possess large powers under local Acts. It will perhaps be not uninteresting to make a reference to the Acts by which the Greenwich Vestry and the Vestries of St. Nicholas and St. Paul, Deptford, are regulated. By a George IV., c. 43, the Greenwich Vestry exercised extensive powers as to the making of rates, the employment and government of the poor, the repairing of highways and street cleansing, and the protection of the parish from fire. The Poor Law Act, 1834, and the Metropolis Management Act, 1855, by the creation of boards of guardians and district boards, took implicitly or directly from the vestry most of its powers with respect to the poor and sanitation. But other powers still remain. Thus the churchwardens and overseers, in conjunction with the vestry, have power to make, and do actually make the poor rate and parish rates which must be allowed by the justices. The churchwardens, overseers and governors and directors of the poor have power to compound with any owner or occupier of houses or land for payment of the rates at such reduced rental, within certain

limitations, as they think reasonable ; and they have further statutory power to exonerate and relieve any poor person from the payment of all or any part of the rates for such time and to such extent as they shall believe such poor person to be incapable of paying. This power of remitting rates is probably unique. The governors and directors of the poor are a body of " Twenty-one substantial and discreet persons, residing, having property in, and being assessed to the rates," appointed by the churchwardens, the overseers, and the vestry, for the purpose of carrying into execution the powers of the Act. Moreover, the churchwardens, overseers and governors and directors can spend such money as they think " necessary and expedient for the purposes of the Act."

By an unnumbered Act of 27 George II., the Vestries of St. Paul and St. Nicholas, Deptford, each make their parish and poor rates, and appoint governors and directors—" substantial and discreet persons " residing in the parish, but without further qualification—to disburse the rates.

It seems clear that in any scheme of reform extremely careful consideration will have to be given to the position and powers of and the private Acts governing these minor vestries.

I now turn to the local sanitary authorities—the incorporated vestries and district boards. Of course, where the sanitary authority is also a vestry it possesses most of the powers enumerated above as belonging to a minor vestry. But the local sanitary authority exercises other and vastly important functions. By the Act of 1855 (sect. 90) all the duties, powers, and authorities that existed before the Act relating to lighting, watering, cleansing, or improving any parish, and all other duties, powers, and authorities relating to the regulation, government, or concerns of the parish (other than those relating to the poor or to the affairs of the church) were vested in the sanitary

authority. Such authority can buy land for the purposes of the Act, can cause existing streets and new streets to be paved, can borrow money for street improvements, can stop streets and can break up highways during the execution of requisite works. All sewers, except main sewers, are vested in the sanitary authority, who must repair them and provide new ones when necessity arises. The authority has power to compel owners to connect with the common sewer; and no house can be built for habitation without drains constructed to the satisfaction of the authority. Local improvements can be undertaken with the consent of the County Council by section 72 of the Act of 1862. By the Electric Lighting Act, 1888, the supply of electric light in a district requires as a rule the consent of the sanitary authority, and the undertaking can be purchased by it. The authority has, moreover, considerable powers under the Metropolitan Gas Act, 1860. It was the local authority for the purposes of the Artisans' and Labourers' Dwelling Act, 1868, now repealed, and is the local authority under the London Building Act, 1894. Under sect. 41 of the Local Government Act, 1888, it is an urban authority with respect to main roads. It is the sanitary authority under the Public Health (London) Act, 1891, and as such it deals with general and particular nuisances, with offensive trades, smoke consumption, sanitation, provision of public lavatories and conveniences, cleansing of streets, unsound food, the provision of water to houses, the notification of infectious diseases, with the making of bye-laws to secure the cleanliness of tanks and cisterns. It has to provide for the cleansing and disinfection of infected bedding, premises and rubbish, for the closing of underground rooms, and for the carrying out of the epidemic regulations of the Local Government Board. The sanitary authority is, moreover, the authority for enforcing the provisions of the Canal Boats Acts, 1877—1884; it is a local authority under

the Factory and Workshop Acts, 1878—1883, the Margarine Act, 1887, and the Sale of Horseflesh Act, 1889; and it appoints analysts under Sale of Food and Drugs Act, 1875. It is a local authority under the Public Health Act, 1875, where it applies to the Metropolis, and Part II. of the Housing of the Working Classes Act, 1890. It appoints the library authority under the Public Libraries Act, 1892, and may itself, under the Local Government Act, 1894, become that authority. It has considerable powers under the Metropolis Water Act, 1897, and under the Cleansing of Persons Act, 1897. This brief analysis of the functions of the incorporated vestries and district boards of the Metropolis shew how extensive and how heterogeneous are the powers vested in them, and the vital necessity that they should be really representative bodies, working without fear or favour for the good of their district.

I now turn to glance at the multitudinous labours of the central municipal body. The statement in "Firth and Simpson on London Government" (published soon after the passing of the Local Government Act, 1888), as to the work performed by the Metropolitan Board of Works is extremely striking. That board "came into existence on January 1st, 1856, and it will pass away on April 1st, 1889, having had a life of thirty-three years and three months. During that period it has exercised an enormous influence on the municipal affairs of London. 'It has constructed a main drainage system at a cost of more than six millions and a-half: embanked the Thames: freed most of the bridges from toll: constructed vast arteries of street communication: established and maintained 2,603 acres of parks and open spaces free to the public for ever: exercised a controlling jurisdiction over the half-million buildings of London: cleared vast insanitary areas: and in many other ways discharged under more than 120 Acts of Parliament

important municipal functions in London." It will be seen, therefore, that the London County Council inherited from its predecessor onerous duties and vast responsibility. To take over the main drainage scheme of London; the government of the Fire Brigade of the Metropolis; the management of parks, commons, and open spaces yearly increasing, one is happy to know, in area; the maintenance of metropolitan bridges; duties with respect to street formation, to dangerous structures, to theatres and other places of public amusement; other duties as to labourers' dwellings, as to infant life protection; and yet other duties as to electric lighting, gas, and water, and tramways, as to the storage of oils and explosives, as to the conduct of dangerous or offensive trades, as to diseases of cattle; to have taken over so wide a sphere of influence was no light responsibility for the County Council. But the Council is the Metropolitan Board, and more. From the county authorities it took over the management and control of county lunatic asylums; it is invested from those authorities with vast powers as to reformatory and industrial schools; with important duties as to weights and measures; with the granting of music and dancing licenses in the entire Metropolis, including the City of London. The county freeholders handed over to the Council the important duty of electing coroners; the justices out of session resigned to the Council the licensing of stage plays in theatres (beyond the Lord Chamberlain's jurisdiction), and also other powers of licensing. The duty of maintaining and repairing main roads was transferred from the highway authorities to the Council. In addition to all these transferred powers, certain entirely new powers were conferred upon the Council by the Act of 1888—powers as to contribution to ordinary roads, as to medical officers of health, as to making bye-laws for the good rule and government of the county; powers of complaint with regard to the regulation of rail-

ways and powers of opposing bills in Parliament, and of instituting or taking part in legal proceedings for the benefit of Londoners.

Nothing, perhaps, can give a more vivid conception of the heterogeneous character of the powers vested in the London County Council than the fact that it acts as a local authority, or in some similar capacity, for the carrying out of some forty diverse and important Acts. These Acts include, to mention some of the more important statutes as yet unnamed, the Factory and Workshop Acts, 1891—1895; the Housing of the Working Classes Act, 1890 (Parts I. and III.); Prevention of Cruelty to Children Act, 1894; Infant Life Protection Act, 1897; Railway and Canal Traffic Act, 1888; Tramways Act, 1870; Highway and Locomotive (Amendment) Act, 1878; Schools for Science and Art Act, 1891; Technical Instruction Acts, 1889—1891; Shop Hours Act, 1892; Wild Birds Protection Acts, 1880—1894; Destructive Insects Act, 1877; Diseases of Animals Act, 1894.

The duties that have necessarily to be undertaken by the London County Council are, we thus see, of the most multifarious character, and it is difficult to know how the most ardent and capable executive in the world can, under such circumstances, keep that full and perfect touch with its duties, which is the first and chief object for which an executive exists. Indeed, it is quite clear that any bill introduced into Parliament for the reform of administration in London must deal specially with this overlaid executive.

This is scarcely the place to indicate specific reforms or to suggest that any particular statutory municipal duties are neglected by the respective authorities intrusted with them. The obvious lines of reform may, however, with propriety be pointed out. I have not here touched upon questions of poor law or of statutory education in the Metropolis. Yet in any new scheme of administration

there can be little doubt that the poor law and the educational authorities will have to be considered. There are two branches of the problem of reform that may briefly be referred to in this place. The first is the question of the redistribution of the powers now vested in the County Council ; the second is the question of local administrative bodies. To relieve the burden of work that lies upon the Council it would be possible to take from it (1) all matters relating directly or indirectly to the poor, such as duties relating to pauper lunatic asylums and reformatory schools ; (2) all matters relating to education, such as science and art schools and technical education ; (3) all matters of local administration capable of being effectively dealt with locally. The first could be taken over by a Poor Law Board for London—a department that has long been greatly needed ; the second could be taken over absolutely by the Science and Art Department ; and the third would automatically vest in the various local sanitary authorities. But how would the local sanitary authorities be constituted ? At present we have seen that local administration is divided up in a manner that has effectively stifled public interest in public matters. The existence in a single district of half-a-dozen minor vestries intrusted with extremely important duties and one sanitary board not directly responsible to the ratepayers is as unsymmetrical as the results produced are unprofitable. The ill-kept, ill-lighted streets, and the insanitary, flagrantly-uncondemned dwellings with their unsavoury surroundings which distinguish (or perhaps confound) so many of the poorer parishes of London, is directly attributable to the irresponsible position of the district board and the irresponsible persons who are frequently found thereon. There are 41 sanitary authorities in London, of which 11 are not elected directly, and those 11 include some of the very poorest districts in the Metropolis. The first reform must be the abolition of a

two-fold local authority and the substitution of a district board complete in itself. Everything substantially local must (if reform is to be effective) be placed in the hands of the local authority, and the local authority must be in every particular, and on every side directly responsible to the ratepayers. At the present moment it is possible to have in one London parish a sanitary board, a burial board, a rating authority, a library authority, commissioners of baths and washhouses, and trustees of parish charities, all absolutely independent of the wishes, the orders, or the entreaties of the ratepayers and parochial electors. It is clear that some change is necessary, and that a symmetrical scheme should be substituted for the present eccentric and apathetic system of administration. The best results inevitably follow the best distribution of labour; and that distribution must as inevitably be found in localising the administrative matters that are inherently local, and in giving to the central municipal body those administrative matters that are inherently Metropolitan. If in addition to this, all local and peculiar Acts are repealed, and the local bodies and the central Council are made directly responsible to their respective electorates, then London will in all likelihood become that which it certainly is not now—a Metropolis administered in such a way as to give to its inhabitants a high degree of health, safety and comfort at a reasonable cost.

J. E. G. DE MONTMORENCY.

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## VI.—LEGAL REFORM IN EGYPT.

**T**HIS is *par excellence*, the country of anomalies and of oddities and peculiarities of every description, and even the old, not to say the "oldest" inhabitant continually finds something calculated to make him exclaim, "Oh land of ancient mysteries, thy marvels are then not yet exhausted." Amongst all these wonders few are more wonderful—in the sense of being extraordinary—than the system of justice (if system it can be called) which prevails where East and West meet together, and barbarism and civilization react upon one another in ways which outsiders would with difficulty realise or lend credence to. Consequently this article aims at giving a brief glance at the nature of the numerous and varying jurisdictions existing in the land, besides referring to certain matters which seem to the writer to call loudly for reform.

To start with, every (European) nation under the sun, with few exceptions, has its own (often miniature) Court where the laws of the mother country are supposed to be administered without fear or favour. Those laws are, however, in some cases, modified or controlled by special consular enactments which simplify Codes, Common Law, Acts of Parliament, and Rules of Procedure. Over these Courts preside Consuls or Consular Judges, the former being sometimes men without any legal training whatever, who, needs be, must be, guided rather by the natural light of equity—a splendid endowment when it does not stand alone, but apt to lead to curious practical developments at other times—than by fixed rules of positive law which often sadly jar upon the lay mind. In Egypt, hitherto, the British communities have, under the Provisions of certain Orders in Council, possessed, in addition to the

ordinary Consul's or Consular Agents' Court (existing in all the principal towns of the Levant), a "Chief Consular Court," having its usual seat at Alexandria, the great commercial port of the country. This Court has exercised a weighty consultative influence upon the other Consular Courts and has enjoyed exclusive jurisdiction in certain matters. It was until lately presided over by a Consul-General and Judge\* who was a member of the Bar. Without, however, the important trading community which is mainly affected by such a change being in any way consulted on the subject, this Court is now practically abolished, a Consul-General who is neither a judge nor a lawyer having been appointed in place of the gentleman above mentioned, whose time of service had expired. At the time of writing no official notification has appeared as to the measures which will be adopted to supplement the judicial powers of the non-legal Consul-General.† It is thought probable that an annulling or amending Order in Council laying down new rules may at any moment be expected which will formally abolish the resident judgeship; all cases for the future, with the exception of the more grave class of crimes and *possibly* some few other matters, being disposed of by the Consul-General.‡ Business men and the few English legal practitioners cannot fail to regard this prospect with mingled surprise and alarm, while those foreigners who have heard of what has taken place wonder anew at British eccentricity as exhibited even in the most important matters. I

\* The "Judge of the Court for Egypt" was appointed to that office by a separate warrant under Her Majesty's sign manual.

† In the meantime the British community is left without a coroner (whose duties moreover a travelling judicial functionary could scarcely perform) and possessed no Vice-Admiralty Court!

‡ It is further considered to be probable that a judge will occasionally come to Egypt either from Cyprus or Constantinople for the purpose of dealing with the exceptional cases referred to.

believe that I am justified in stating that no saving, or at all events substantial saving of expense, is to be looked for in connection with this innovation. The other important European nations possess duly qualified judges, and the Greeks an Assize Court. Yet Great Britain, in spite of her "Veiled Protectorate," is in matters judicial reduced to the level of Belgium or Brazil!

The Consular Courts of the various European countries possess exclusive jurisdiction where their subjects are charged with the commission of any crime, whether or not such offence has been directed against a person of the same nationality. In civil actions, however, the Consular Courts are only empowered to deal with cases where both plaintiff and defendant acknowledge a common sovereignty. Up to the year 1876, the date of the inauguration of the International (more usually termed the Mixed) Tribunals, the latter limitation was not in force and the jurisdiction of the Consular Courts was consequently much more extensive than at present. All matters affecting personal status are still dealt with by the latter.

The International Courts just alluded to were constituted with the consent and approval of 14 interested Powers, who abandoned a portion of the privileges conferred upon them by the capitulations in respect of the wide jurisdiction theretofore exercised in matters affecting their subjects, and those who, not being subjects in the full sense of the term, were yet "protected" persons, withdrawn from the often oppressive and arbitrary domination of the Ottoman Courts. (In other portions of the Turkish Empire the old state of things still practically continues.)\* The Mixed

\* There is a Court of Appeal sitting at Alexandria, and Courts of original jurisdiction in that city, Cairo and Mansoorah. The former consists of eleven judges, seven of whom are non-Egyptian. One of the latter always presides. The other Courts comprising seven judges, of whom four must be foreigners. Both the principles of the law and the procedure are codified, and much resemble their French originals.

Tribunals possess exclusive jurisdiction in all civil or commercial actions whatsoever, wherein any one of the parties is of a different nationality to any other party.\* Thus, for example, a bankruptcy in which the debtor and all the creditors *but one* are British subjects is a matter cognisable solely by these Courts.† In questions concerning land the Reform Tribunals—as they are also called—possess exclusive Jurisdiction. The fact that all parties in such an action belong to one nationality makes no difference whatsoever.‡ Moreover these courts have shewn themselves to be exceedingly tenacious—not to say jealous—in the maintenance of their rights and at times they have sought to extend their jurisdiction in a manner which has very nearly brought them into conflict with the Government of the country and with the occupying power. The latest instance illustrative of this tendency may perhaps be found in the case of a British soldier named Lawler, who was tried for the murder of a native boy, several months ago before the judge of H.B.M.'s Chief Consular Court. The writer prosecuted on behalf of the Crown, but the man was acquitted by the Jury, who seem to have considered that the death was due to accident. The verdict gave rise to considerable discussion

\* This definition applies to natives or Ottoman subjects as well as to foreigners.

† These courts have very limited powers in criminal matters. They can try their own members and officers for abuse of their functions, and those interfering with them in the exercise of their duties. Ordinary crimes are tried by the consular authorities of the accused, as already mentioned.

‡ The Egyptian Government and their British advisers desire a change in this respect. An International Commission to deal with this question and that of the "Caisse de la Dette" is desired, but up to the present date only about one-half of the Powers have given their assent to the proposal. This Commission would also probably seek to restrict a wide claim to jurisdiction made by the International Courts whereby actions between persons of the same nationality would be triable wherever the subject of another State possesses an "interest" in the litigatory matter.

at the time, and through the influence of the Anti-English party (as is generally believed) the relatives of the deceased boy brought an action for damages against the Egyptian Government and the British military authorities as well as Lawler himself.

These proceedings proved too monstrously absurd to find acceptance with the Court, which decided that it was incompetent to hear the case. All the same, the fact that able advocates, with influential backers, French and Egyptian, should have thought it even possible to carry through those proceedings to a successful issue shews abundantly the feeling that was known to exist on the judicial bench (where England is feebly represented), and the decision actually arrived at may well have owed something to the circumstance that it was perceived that the patience of that country was well-nigh exhausted by the action of the tribunals in the matter of the "Caisse de la Dette" and the Soudanese credits.

The International Courts greatly favour the transfer of choses in action by means of which natives having disputes with other natives frequently place themselves in a position to have their cases tried by these Courts. The transfer is mostly only nominal, but sometimes the transferor really sells his interest in the matter in litigation rather than incur the risk of an appeal to the Justice of the Native Tribunals, which only inspire a very limited amount of confidence in the minds of Egyptians.

This brings me to the consideration of the present condition of the last-mentioned Courts, which must on no account be confounded with that over which the Mooftee—the principal religious Moohammedan judge—presides, and which deals with questions of personal status amongst the Mussulman population. The Native Tribunals are in possession of codes which in civil and commercial matters much resemble those of the Mixed Courts. The former,

however, unlike the latter, have extensive criminal jurisdiction, *i.e.*, over the masses of the Egyptian population. The Court of Appeal sits in Cairo.

It has been sought to remedy to some extent the unsatisfactory character of the native tribunals by infusing new blood into the "personnel" of the judges, and this has been done not only by changes amongst the Egyptian occupants of the Bench, but by the appointment, chiefly to the Court of Appeal, of a number of Englishmen during the last few years. Here, however, a great difficulty has been found to exist owing to the small scale of remuneration which prevails, and the impossibility of obtaining in sufficient numbers men capable of fully performing the duties of these posts by reason of their combined legal attainments and knowledge of the written and spoken languages of the country. These latter differ widely, and, in the case of the written form, a long and laborious course of study is necessary. The proper course to adopt would undoubtedly be to appoint a class of English student judges, members of the Bar, who should receive the pay of the present occupants of the Bench in the courts of original jurisdiction, and who, after a certain period, say two years, could be raised to the position of full judges with an increase of salary of at least one-third. In this way there would be no need in the future, as has been done in the past, to search outside the ranks of the Bar or of British subjects for men conversant with the Arabic language, and whose voices would have weight in the councils of their Egyptian confrères; or, on the other hand, to select men acquainted with law but devoid of linguistic attainments.

It may be remarked *en passant* that the advocates who practise in the native Courts are, generally speaking, scarcely up to the level of their functions, and are treated by the judges with but scant ceremony, a somewhat serious matter, for the client inevitably suffers where his legal

representative is listened to impatiently or perhaps interrupted. To some extent this observation applies to the relations between Bench and Bar in the Mixed Courts where the practitioners are usually of a much higher type and holders of a European diploma. This state of things is doubtlessly owing to the fact (or is so to some extent) that the judges of the last-mentioned Courts are either men who have received no legal training of any kind or come from countries where the judicial career is separate from the forensic, thus preventing that sympathy which should ever exist between those who have followed a common and an ennobling pursuit. While the reform of the Native Courts is a work which Great Britain has undertaken on her own account, and which she must single-handed bring to a satisfactory conclusion, that of the Mixed Tribunals would require the co-operation of the Areopagus of the interested Powers, although one thing at least may be done in that direction without obtaining their previous consent. The first attempt at Reform should aim at an improved state of things upon the Judicial Bench, for if the basis be unsound how can the superstructures hope to stand? The Khedive, by whom the appointments are made, has only (being, of course, guided in this matter by his official advisers) to refuse his assent to the future appointment of judges who are not of proved capacity as well as integrity, and the gradual but steady advance of judicial capacity will be assured. But any enquiry respecting the qualifications of candidates should not rest satisfied with the mere formal assurances of the Foreign State by which the particular judge may be put forward. Facts in support should be asked for.

A crying want, calling urgently for reform, would be remedied by the admission of English as one of the recognised languages. At present, French, Italian, and Arabic can be used for all purposes. As a matter of fact,

however, the first mentioned language is the one generally employed, especially in Court, the majority of the judges not understanding the other two sufficiently well to do justice to the arguments of counsel when enveloped in the phraseology of those tongues. If our language were admitted, the great practical benefit which would flow from it would be the abolition of the tiresome and unsatisfactory process of the translation of every English document into French or Italian. For years to come the former would only be heard occasionally in the halls of "mixed" Justice, but at least a strange anomaly would be removed and a useful step taken in the right direction of asserting the just rights of our countrymen, who, in Egypt, have in some instances but too good reason to complain of indifference and neglect, even on the part of their own representatives.

I will now enumerate some of the principal reforms which are, in my opinion, called for in relation to the existing judicial administration of the country. They are neither numerous nor fraught with difficulty of detail :—

1. As regards our own Chief Consular Court, it should be presided over by a thoroughly competent man possessing the title as well as the functions of a judge. Did the amount of business transacted justify such a step, this judge should, as was formerly the case, perform only the duties of that office, which would then be altogether apart from those of the Consul-General at Alexandria. The Foreign Office would, however, almost certainly consider such a scheme undesirable as incurring an increased expense, and, therefore, the functions of Consul-General and judge should continue to be exercised in one and the same person. At the same time the Chief Consular Court should, as was recently contemplated, be made a Court of Appeal, with power to overrule the decisions of the various consular officers who administer justice throughout Egypt. Another



very desirable reform would be the strengthening of the Supreme Consular Court at Constantinople, which now, *inter alia*, acts as an Appeal Court for cases coming from the Chief Consular and the other Consular Courts in Egypt. The Supreme Court should possess at least two judges.

2. One great step would be made in the direction of improving the administration of Justice in the International Courts did the Egyptian Government, as already suggested, refuse to accept on every occasion the often unsuitable nominee proposed by foreign States, whenever a vacancy occurs.

3. The introduction for all purposes into the International Tribunals of our language, with which many of the judges and Court officials are familiar.

4. The jurisdiction of the Summary Court should be greatly extended, and appeals permitted to the Court immediately above, instead of to the Court of Appeal (as at present). Would-be litigants now hesitate, in the case of small claims, before the heavy expenses which must be incurred in bringing them before the higher Court, where the limit of the Summary Tribunal is exceeded, and few appeals take place from the latter's decisions. This Court should possess Commercial jurisdiction.

5. Circuit judges should be appointed possessing similar powers to those of the Courts of original jurisdiction, including those for the trial of small causes and petty offences. As regards the latter ("contraventions") considerable hardship now exists, a person charged with a trivial offence entailing a small fine being forced to make a long and expensive journey to the nearest large town, in order to have the matter settled.

6. There ought to be only one Land and Mortgage Registry for Egypt. The advantages of this are obvious. The searches now required are at once costly and troublesome in the highest degree.

7. The enactment of a law on Patents and Trade Marks.

8. The Native Courts should be reformed on a British basis, and cease to be a parody of Continental Tribunals. The Presidents or Chief Justices should be men of the highest calibre obtainable; and a serious effort should be made to render these Courts worthy of supplanting the International in the fulness of time.

Now that a large proportion of the judges of the Native Court of Appeal are British, our language should be admitted, at least as a vehicle for addressing the Court.

All these suggestions, if realised, would greatly tend to the bettering of an imperfect and anomalous system which could not exist for a day in a country which was really independent, or which was only dependent upon one enlightened outside power. At the same time nothing, save the peculiar position of Egypt, which is at the mercy of many masters, could lead any one to advocate reform where abolition of the whole existing legal structure, and the erection of a new one is what the needs of the case really require. Whenever Egypt and the protecting power have free hands, the Capitulations—those galling fetters of past times—will assuredly be swept away, and one of the first results will be the creation of a High Court of Justice, open to all citizens, and all causes, and presided over by Judges who will command the utmost confidence of the whole community. Government could then make its own selections,\* no longer bound, before doing so, to consult with the Ministers of even the smallest European States—States, which, having little or no interest in this ancient

\* Under those altered circumstances, moreover, a strong Bar would be in existence, whose healthy influence and criticism could not fail to control the choice made by Ministers and insure both the selection and survival of the fittest.

land, can hardly be supposed to greatly trouble themselves in the choice which they make of representatives upon ~~its~~ Judicial Bench. Till then, however, Egypt must rest content with the day of small things, and small reforms in the direction of lessened anomalies and greater symmetry in her institutions.

R. FLETCHER WILME.

## VII.—PRISON REFORM.

**I**F there is one mark of a community of freemen more characteristic than another, it is that they will interest themselves in the criminal law: that they will watch its development with a jealous regard, and discuss its administration with fearless criticism. And, upon the other hand, the society which regards the criminal law and its administration with apathy or indifference is already infected to the heart. These views may be in some quarters unwelcome: but I am sure that every candid and thoughtful mind will admit that public justice fails of its aim if it is not supported by public opinion: and I appeal to the great authority of Blackstone who very nobly said that: "Next to doing right, the great object in the administration of public justice should be to give public satisfaction." I hail, then, with unalloyed pleasure the evidence upon every hand that the people of this country are beginning to turn their attention, in a manner which will not be denied, to the consideration of crime and the treatment of the criminal, as an essential part of the many-sided social movement of our day.

The late Sir Frank Lockwood used to tell a story which amusingly illustrates the historical aspect of crime. A man

having been convicted of horse-stealing, the judge said to him very sternly: "Yours is a most serious offence: fifty years ago it was a hanging matter." "Well," replied the prisoner, "fifty years hence it mayn't be a crime at all." Crime is to a large extent a question of epoch—or, in other words, an act which is treated as a crime at one period may be no crime at another; nay, it may even be a merit. Of the ten crimes which the old Hebraic law punished with stoning, nine have ceased to be offences. Upon the other hand, how many founders of noble English families centuries ago would to-day find themselves relegated to a convict prison! A cynic might say that the "habitual criminal" of the nineteenth century has the misfortune to live in an age in which his merits are not appreciated.

Again, there is at least an element of truth in the famous aphorism that "society has the criminals that it deserves." No one can deny that crime is largely the result of social environment. "*Tous les crimes de l'homme commencent au vagabondage de l'enfant*,"—such was the conclusion of Victor Hugo. The crowded and reeking slums of our great cities have much to answer for. The mortality among children under such conditions is terrible; but to my mind it is still more appalling to think of those who do not die, but grow up sickly in body and weak in mind, unfit for the battle of life, and thus ever ready to fall an easy prey to those temptations to crime which it is the business of a class of men in our great cities to whisper in the ears of the unfortunate. Woe to the community which neglects those social conditions which constitute the forcing-beds of crime!

But the theory that the fault lies with society must not be carried too far. To do that would be to libel and degrade mankind. As a distinguished foreign criminologist has very nobly said: "*C'est calomnier la nature humaine que de lui ôter le mérite de ses vertus et la responsabilité de*

ses fautes ; que de lui ôter la conscience et la liberté ; de soutenir que, dans quelque circonstance que ce soit, l'honneur, la probité, la bonne foi, la pudeur, peuvent être sacrifiés, sans qu'il y ait un autre coupable que la société. Par quel miracle, quand l'individu n'est pas responsable, la société le serait-elle ! ”

Recognising then individual responsibility, and recognising also that crime is anti-social, the rebellion of a part against the whole—we must admit that there resides in society both a right and a duty to punish crime. But if there is one lesson written in larger characters than another upon the page of history it is this—that the efficacy of punishment does not depend upon its severity. The cruelty of the ancient codes, and also of the older criminal law of this country, makes a more human age shudder. Wholesale executions were preceded by barbarous tortures. The unhappy victim was mutilated, or broken upon the wheel, or plunged into a chaldron of boiling oil, or had his nostrils slit, or was flayed alive, or disembowelled, or subjected to the slow agony of impalement or starvation. Meanwhile crime flourished exceedingly, and the whole population was brutalised. “ In the midst of the general lawlessness every man was, when he had the power, a law unto himself, and inflicted upon his enemy the punishment which the law of the land destined for the evil-doer.” In spite of all the teachings of experience, a sneaking belief in the efficacy of brutal punishments still survives in our midst, although of course in a modified and mitigated form. At the present moment it is exhibited in the demand that the legislature should extend the punishment of flogging to certain offences: and the brutality of these offences is pleaded as justification for the exceptional punishment. What curious inconsistency and muddled reasoning ! I agree that the offence is brutal in the extreme, but to inflict a brutal punishment upon the offender is in effect to

give legal sanction to *his* brutality; and the impulse to impose such punishment can only spring from a relic of savagery of the same kind at bottom as that which inspired the criminal. Happily the public conscience is awakening to the great truth that, while the main end of punishment is the prevention of crime, that end must be carried out as far as possible in harmony with the secondary end of achieving the moral reformation of the particular offender.

The publication three years ago of the report of the Departmental Committee on Prisons, appointed by Mr. Asquith, then Home Secretary, marks the commencement of a new era in the history of the penal system of this country. The pith of the report may be stated in a single sentence—the Committee found that, while progress had been made in the reform of the *prisons*, nothing had been done to reform the *prisoners*. It might be said that the best of the prisons were almost faultless on their physical side: they were well-drained, they were scrupulously clean, they were administered in accordance with the latest scientific principles of sanitation. Indeed in these respects the contrast which our prisons present to thousands of homes of honest freemen outside their walls is one of the little ironies of our social system. A distinguished man of science said not long ago that “if we could succeed in getting the dwellings of our working classes made as healthy as the felon’s cell, eight years would be added to their productive ability.” But on the moral side of our prison system the Committee pronounced this scathing condemnation: “It is open to the reproach that it not only fails to reform offenders, but in the case of the less hardened criminals, and especially of first offenders, it produces a deteriorating effect.”

Here let me stop for a moment in order to contrast with this terrible indictment of our prison discipline at home the results of the prison system adopted in one of our colonies.

In the very year in which the Departmental Committee presented their report, Sir William Macgregor, the Administrator of British New Guinea, thus described the prisons of that country : -

“ Under the management of the late Dennis Gleeson, the prison system with regular hours of work, regular meals, firm but kind treatment, mid-day lessons, mild punishments, and small rewards, became a most valuable school in which the prisoner is raised and not lowered, and from which he almost invariably goes out a better and more useful man than he was before.”

But to return to our Committee. By an analysis of the statistics of recidivism submitted to them, they arrived at the following conclusions :—“ Of every 100 who go to prison a first time, 70 do not return again ; of those convicted a second time 48 per cent. return again ; of those convicted a third time, 64 per cent. ; of those convicted a fourth time, 71 per cent. ; of those convicted a fifth time, 79 per cent. ; and the old offender is constantly returning again. It is difficult to avoid the belief that the proportion of reconvictions during the last twenty years has increased. On the percentages in the return it has increased in respect of the recommittals for the third time or more. But against this may be set the fact that since 1873 the methods of identification, though far from complete, have continued to improve.”

It may be convenient at this point to refer to one or two of the counts in the indictment of our prison system which were most strongly urged in the recent debate in the House of Commons. First, as regards diet. The Committee recommended that the Commissioners should “reconsider” No. 1 dietary, which consists of one pound of bread and a pint and a-half of stirabout daily ; the stirabout containing 3 ozs. of Indian meal and 3 ozs. of oatmeal. This diet is given to prisoners sentenced for seven days and under, and also for the first week in the case of sentences of more than

a week and not exceeding one month. The Committee reported that "the stirabout appears to be so distasteful to a large proportion of prisoners that very much of it is rejected. We found on our visit to Pentonville Prison that this was the case, and many other witnesses from other prisons confirmed this experience." It appears from the "Statement" of the Commissioners which has just been presented to Parliament that this recommendation "has been reconsidered, and after full enquiry it has been decided that no change is called for." I think that this decision will be almost universally condemned. The evidence of the mischievous results of the low diet upon which a prisoner for a month or under has to subsist is irresistible. I may cite as an illustration the statement made by Mr. J. L. Hannay, the Metropolitan magistrate, to the Committee on the Treatment of Inebriates: "They come out," he said, "after a month's poor diet, and in my experience very often indeed they are brought up next day after they have been liberated, because (and naturally so) they are very weak and pulled down under the diet, and they feel a craving."

In face of the personal testimony of Mr. Davitt and Mr. Burns, that during the whole time of their imprisonment they never knew what it was not to be hungry, it will be impossible to resist the demand for an enquiry into this aspect of our penal system. As Mr. Asquith said, it must be conceded if only to satisfy the public conscience.

Another topic much discussed in the recent debate was insanity in relation to prison life. Upon this subject I cannot but regret that misleading figures have been put before the public by a gentleman to whom the cause of prison reform owes much—I mean the Rev. W. D. Morrison. Comparisons between the ratio of insanity in prisons and that prevailing among the outside population must be fallacious, having regard to the difference of the composition of the population which forms the basis of the



calculation. It is futile to compare a prison population, which is constantly fluctuating, with the general population, which is relatively stable. But when all proper deductions have been made, it is indisputable that the ratio of insanity in prisons is far higher than in the general population. We must not, however, hence jump hastily to the conclusion that it is the prison life itself which is the potent cause. A glance at the statistics of insanity, in relation to pauperism, should be sufficient to correct such an inference from the premises, for I find that, while the ratio of the number of criminal lunatics to the number of convicted adult prisoners is as 1 to 19, the ratio of the number of insane paupers to the whole class of adult paupers is as 1 to 6. As the Committee points out, the high ratio of insanity in prisons is inevitable, because "the average prisoner in height, weight, strength and mental condition is markedly below the average of the outside population." But, high as is the ratio of recognised insanity in prisons, there is too much reason to suspect that many prisoners who are really insane are not included in the statistics. The case of the Irish prisoners, whom the Home Secretary set free about eighteen months ago, raised very serious misgivings. Two of them who were released, according to the official return, on the ground of "debility," were found as soon as they reached the outer world to be raving lunatics. It would seem from the testimony of a distinguished French physician, Dr. Laurent, that this terrible state of things is not confined to English prisons. In his interesting book, entitled "*Les Habités des Prisons de Paris*," the doctor says:

"Sur trois cas de folie un seul au plus est reconnu et figure sur les statistiques officielles : les autres passent inaperçus."

And he adds:

"Au début, je les signalais à l'administration ; on me répondit : 'Laissez-nous tranquilles ; ça ne vous regarde

pas.' L'argument était sans réplique. Aussi les pauvres diables finissaient leur peine en prison, et, puis après, ils s'en allaient à la grâce de dieu." Then Dr. Laurent says that he discovered them by accident, and finally observes : "Combien d'autres déliraient dans leur cellule et que je n'ai jamais vus" !

With a special view to more efficient measures for the detection of insanity in its incipient stages, the Departmental Committee recommended the appointment of a medical man as an additional member of the Prisons Board. The refusal of the Home Secretary to act upon this suggestion is to my mind very regrettable. In Ireland one of the Prison Commissioners is a physician, and the Howard Association attributes in part at least to this arrangement the undoubted fact that the Irish prisons are administered with more humanity than the prisons in England, and that they have been singularly free from "scandals" of a kind which have been unpleasantly frequent in this country. I may quote a short extract from the interrogation by the Departmental Committee of Mr. Mitford, an English Prison Commissioner, which admirably brings out the difference in results between the two systems—a difference which he was unable to explain, and into the causes of which it would seem that he had never troubled to inquire.

*Evidence, page 360, Questions 10704 and 10705 :*

10704. Can you account for the fact that there are three times as many punishments altogether inflicted upon prisoners in England in proportion to the population as there are in Ireland ; and that there is so much flogging in the English prisons, whereas there is none at all in Ireland ?

I cannot account for it.

10705. Can you account for the fact that the death-rate in English prisons is twice as great as it is in the Irish prisons ?

I have not the slightest idea why it is so.

It may now be convenient to state the principal provisions of the Prisons Bill which has been introduced into the House of Commons as the outcome of the recommendations of the Committee. In the first place, the Bill proposes to amalgamate the Board of Prison Directors, which is charged with the administration of convict prisons, with the Board of Prison Commissioners, which is entrusted with similar duties in regard to local prisons. As, however, "the Commissioners" and "the Directors" are now only different names of the same persons, this alteration is of little practical importance. The Bill also includes the following reforms :

(1.) The extension of the penal servitude system of remitting part of the sentence, by way of reward for industry and good conduct, to terms of imprisonment of more than nine months. This proposal is excellent as far as it goes, but it does not go far enough. It would apply only to about 2,000 prisoners. The concession ought to be extended at least to all prisoners whose terms exceed six months. If this were done, 3,500 additional prisoners would be brought within the provision.

(2.) The possible combination of fine and imprisonment in the compurgation of persons committed to prison in default, in accordance with the plan which I explained in the *Westminster Gazette* in July, 1896, under the heading "How to Save £50,000 a Year on our Prisons." It is proposed that, where a part only of the fine can be raised, a reduction of the sentence should be made bearing the same proportion to the full term as the sum paid bears to the full amount of the fine. This provision, which is obviously both just and politic, is embodied in the law of most continental countries, and has long formed part of our own Indian Penal Code. It is startling to find that out of the total number of convicted prisoners in local prisons in 1896, which was 150,098, considerably more than half,

viz., 78,743, were committed only because they were unable to pay the fines imposed on them. Any well-considered alteration of the law calculated to diminish the number of these prisoners or to shorten the period of their detention should be heartily welcomed. Modern legislation has brought into existence an enormous number of what may be called, in a sense, *artificial* offences, e.g., violations of municipal bye-laws. A man is sent to prison in default of payment of a fine imposed as punishment for an offence of this character: he may come out of prison the friend and associate of habitual criminals. And thus the ultimate result may be to transform a comparatively harmless member of society into a dangerous thief or house-breaker.

I pass on now to consider what the Home Secretary described as "the primary object of the Bill," namely, "to give the power of applying differential treatment or classification to our prison population." The gist of the recommendations of the Departmental Committee was "classification": here, therefore, the influence of the Committee is marked. The Bill establishes a second division of misdemeanants, who are to be subject to a treatment much less indulgent than that of misdemeanants of the first division, but somewhat less rigorous than that of the ordinary prisoners. According to the "Explanatory Memorandum" of the Bill, it is intended to include in this class "debtors and a multitude of offenders not sentenced to hard labour, whose acts, though legally criminal, involve nothing dishonourable or disgraceful." This proposal, as regards debtors, is open to grave objection. It is, to my mind, a startling proposition that this generation, which vainly imagines that it has abolished imprisonment for debt altogether, should, for the first time in the long and curious history of the subject, be asked to treat debtors as criminal prisoners. They are to

be compelled to wear prison clothes, and to be liable to suffer other indignities. The Home Secretary pleaded that debtors can be committed to prison only when they refuse to pay, although they have the means; but he was promptly corrected by Sir Robert Reid, who declared that, although that might be the law, the practice was otherwise. I may further point out that the proposal would cover cases of non-payment of Poor Rates, where it is not necessary to prove ability.

It may be interesting to the readers of this Magazine, to indicate two technical points in regard to which the Bill as drawn does not, I think, carry out the intentions of the Home Secretary.

(1.) In answer to my enquiry, the Home Secretary stated that it is intended by the Bill that persons who go to prison because they cannot pay the fines in Board School, Salvation Army, and vaccination cases, shall be treated as misdemeanants of the second division. But the description in the Bill applicable (if at all) to such persons is as follows:—"Any person imprisoned in default or in lieu of distress to satisfy a sum of money adjudged to be paid by *order* of a court of summary jurisdiction." Now I submit that a fine is not "a sum of money adjudged to be paid by *order*," and that the appropriate words to cover a fine are "a sum of money adjudged to be paid by the *conviction* of any court"—words which are actually used in another clause of the Bill.

(2.) But there is a further point of considerable importance. The provision applies only to misdemeanours. It is true that it applies whether the trial be on indictment or summarily, but the offence must be a misdemeanour. Now a misdemeanour, according to the ordinary terminology, is an indictable offence below felony. If this be so, then not one of the cases named by the Home Secretary is really included within the provision.

Apart from this new class of prisoners which is directly established by the Bill, large powers with respect to the differential treatment and classification of prisoners will be vested in the Secretary of State. The Bill repeals the old Rules included in the Prisons Act of 1865, which have become obsolete, and now constitute a hindrance to progress in methods of dealing with prisoners. It is proposed that the Secretary of State shall be entrusted, in the case of local prisons, as he is already in the case of convict prisons, with power to frame a complete code of rules. These will regulate, *inter alia*, the mode in which sentences of imprisonment are to be carried out; and it is provided that in making such rules regard shall be had to the sex, age, industry, and conduct of the prisoners. At the same time the veto of Parliament, which at present applies only to rules for local prisons, is extended by the Bill to the rules for convict prisons, so that for the future the whole code will receive Parliamentary sanction.

These proposals, I am sure, will be generally received with warm sympathy and approval. They remove statutory bars, and render possible far-reaching reforms in the administration of our prisons. As the Home Secretary very truly said, they present him with a great opportunity. I regret, however, that he has not seen his way to make a larger use of his opportunity. While I cordially admit that the draft Rules, which have been published, contain some admirable features, they do not, on the whole, bear out the promise of the Bill and its accompanying Memorandum. As I have said, the Bill makes a clean sweep of the Rules contained in the Act of 1865, and gives the Secretary of State an absolutely free hand. It is, therefore, extremely disappointing to find that he intends to re-enact practically the old rules with very little alteration. Moreover, the Rules are incomplete, and in many cases misleading, without the Standing Orders which are framed in connec-

tion with them. I will give, as an illustration, the Rule relating to the instruction of prisoners—a matter to which the Departmental Committee attributed much importance. The Rule is as follows :—

“ 178. Provision shall be made in every prison for the instruction of prisoners in reading, writing and arithmetic, during such hours and to such extent as may be appointed. It will be the duty of the Chaplain to give daily his personal superintendence to that instruction.”

This Rule is expressed in sufficiently important, not to say pompous, terms; but it is studiously vague. I am informed, however, that the Standing Order provides that each prisoner is to have at most 30 minutes' instruction twice a week. I submit that this practice does not at all adequately carry out the spirit of the Rule. Moreover, the Departmental Committee recommended that the teaching should be given in classes, as being calculated to give better results. In making this suggestion they were supported by the opinion of Lord Norton, one of the most experienced Visiting Justices in the country. “ Class instruction (he said) has a very considerable effect on the character of the prisoner: it awakens emulation and attention, which it would be almost impossible to do in a cell.” But the Commissioners still refuse to adopt class teaching except in the case of juveniles.

This decision is no doubt due to that morbid fear of association, which has long been the “ bogey ” of the Prison Commissioners, and continues to colour the view which they take of every proposed reform, in spite of the conclusion to which the Departmental Committee were driven by the evidence submitted to them, that “ the evils attributed to contamination by association have been exaggerated so far as male criminals are concerned.” The Committee recommended that “ the privilege of talking should be given, under necessary supervision, to all

prisoners under long sentences who have conducted themselves well." Yet we find that the Home Secretary deliberately proposes to re-enact at this time of day the terrible old rule—(154) "The Governor shall enforce the observance of silence throughout the prison, and prevent all intercourse or communication between the prisoners." And, notwithstanding all the differential treatment which is proposed in favour of various deserving classes of prisoners, there is no exemption from this rule in any case!

Again, the Committee recommended that the duration of the period of separate confinement of convicts (namely, nine months) should be reconsidered. But the Commissioners are stoutly opposed to any change in the practice. They are convinced of "the advantages in a reformatory sense of that portion of the imprisonment." They seem to be conscious, however, of the terrible risk which it involves, for we are informed that "the Directors have ordered that any prisoner who, during the probationary period of nine months, might, in the opinion of the Medical Officer, become adversely affected in body or mind through undergoing such period of separate confinement, shall be removed to a convict prison for out-door labour or other special treatment."

Here again, apart from medical grounds, surely differential treatment ought to be applied. No doubt cellular confinement is a powerful deterrent, and may be justifiable as an exceptional punishment. Dr. Laurent, the eminent French expert, says that for the habitual criminal the cell is the only effectual punishment: "*La solitude mate les criminels les plus forts et les plus redoutables.*" And he adds that he has seen strong men cry and beg on their knees that they might have a companion in their cell. But association also has its uses. It is the opinion of Mr. Wines, the American penologist, that "for the generation of the moral force necessary to carry the mass



of prisoners upward and onward in a great reformatory current, association (under proper restrictions) is indispensable." And M. Prius, the Director-General of Belgian prisons, very pertinently asks :—

"Can we teach a man sociability by giving him a cell only, that is to say, the opposite of social life: by taking from him the very appearance of moral discipline? Is not this to place him outside the conditions of existence, and to unteach him that liberty for which we pretend he is being prepared?"

These considerations obviously apply with special force to the period more immediately preceding a prisoner's discharge. I note, therefore, with great satisfaction, that the Home Secretary proposes to establish an "Intermediate Class," to consist of prisoners who are within 12 months of release. Rule 45 (Convict Prisons) provides as follows:

"A prisoner in the Intermediate Class will, wherever possible, be employed at the trade of which he has some knowledge and which he declares it to be his wish and intention to follow on release. He will be given special technical instruction in such trade and be encouraged to make himself proficient, and thus to give himself the chance of employment at it on release."

This is excellent so far as it goes. At present it is the rarest thing in the world for a released prisoner in England to betake himself for a livelihood to the trade which he practised in prison; whereas it is claimed for Elmira that 78 per cent. of the inmates go straight on discharge to the trade which they have learned in the reformatory. But it will be observed that no provision is made in the Rules for relaxing the prison discipline in favour of the members of the Intermediate Class. Now the true *raison d'être* of Intermediate Prisons—such as the famous Hungarian prison at Lepogiyava, and the prison which formerly existed at Lusk, in Ireland—is to supply a half-way house between

the convict prison and the outer world : leading strings before perfect liberty. As Lord Chief Justice Russell truly said upon a recent occasion, "An Intermediate Prison is a place where a prisoner whose term is expiring may be taught to consider himself more or less a free man, until the moment comes for his entire emancipation." It may be pointed out that the Departmental Committee suggested an Intermediate *prison*, not an Intermediate *class* in an ordinary prison : and that Colonel Plummer, the Governor of Borstal Prison, stated in his evidence—Question 8972—"You would have to give up one prison entirely for this purpose, *because you could not mix the disciplines.*" It would, however, be ungrateful not to welcome this experiment of the Commissioners, however restricted.

As regards labour in prisons generally, the Departmental Committee recommended that all purely mechanical work on cranks or treadwheels should be entirely abolished wherever possible—work which Sir Edmund Du Cane had himself described as "hard, dull, useless, uninteresting, monotonous, humiliating, irritating, depressing, and debasing." The Commissioners state in their "Notes" upon the Rules that they have framed a rule (No. 149), the object of which is "to get rid of the rigid and inelastic provisions of the Act of 1865, which compel certain forms of hard labour, chiefly mechanical, to be prescribed by the Secretary of State." They very candidly add, however, that "as a matter of fact, penal machinery will be the form of hard bodily labour in most prisons, though not necessarily for the full period of 28 days." This is not very encouraging. Mechanical labour deadens and degrades; whereas, on the other hand, I believe that there are few more powerful moralising forces than productive work. The prisoner asks himself: "If I am compelled to work, why should I work for the State instead of working for myself"? And he begins to see how unprofitable in the

long run crime really is. As Mr. Herbert Spencer has forcibly observed: "The testimonies of those who have had most experience—Maconochie in Norfolk Island, Dickson in Western Australia, Obermaier in Germany, Montesinos in Spain—unite to shew that in proportion as the criminal is left to suffer no other penalty than that of maintaining himself under such restraints only as are needful for social safety, the reformation is great; exceeding indeed all anticipation."

How far the Commissioners are carrying out the recommendation of the Departmental Committee that the teaching of industries in prisons should be improved, it is impossible to say. We have been informed that "a scheme has received the sanction of the Secretary of State and the Treasury by which a system of skilled instruction of trades has been established." But Sir Matthew White Ridley has adopted the extraordinary course of refusing to lay the scheme on the Table, or to give further information on the subject. I can only conclude that the scheme, whatever it is, will not bear the light of day.

Upon the other hand, it is pleasant to be able to congratulate the Commissioners upon their admirable rules respecting the treatment of juvenile offenders (except that the age should have been raised to 17, as recommended by the Committee), and upon the extension to all Local Prisons of the Star Class system, previously in force in Convict Prisons only, under which first offenders are separated from other prisoners. But the Rules respecting unconvicted prisoners are not yet at all satisfactory. I submit that they are not framed in accordance with the 39th section of the Prison Act, 1877, which provides that special rules shall be made, "regulating their confinement in such manner as to make it as little as possible oppressive, due regard only being had to their safe custody."

One clause of the Bill yet remains to which reference must be made. It runs as follows: "The Secretary of State may appoint, for any Convict Prison, a board of visitors, of whom not less than two shall be justices of the peace, with such powers and duties as may be prescribed by Prison Rules."

It is intended that a separate board of visitors should be appointed for each convict prison, or five boards in all. But I would suggest that one board only should be appointed, to have supervision over all the convict prisons. Parliament, in sanctioning a new code of prison administration, might wisely entrust to a new body some duties in supervising the application of the code. We have before us the example of a neighbouring country. When France, in 1875, reformed her prison system, a new body was brought into existence—*le Conseil Supérieur des Prisons*, "pris parmi les hommes s'étant notoirement occupés des questions pénitentiaires, et chargé de veiller à l'exécution de la réforme inaugurée par la loi de 1875." This Council is composed of members of Parliament and the most capable officials of high standing. Now I suggest that a somewhat analogous body should be constituted in this country. Let me say at once that I do not propose to affect the position of the Secretary of State. He is and must remain the supreme executive authority, subject only to the control of Parliament. Similarly, the Prison Commissioners would retain their old duties and authority in regard to the ordinary discipline and management of the prisons. But the new Council should have free access to every convict prison; they should be entitled to demand from the Prison Commissioners full information of all their proceedings: and they should be empowered to make from time to time such reports to the Secretary of State as they should consider desirable. The *raison d'être* of the new body would be to survey our convict prison system from the point of view of

the enlightened conscience of the community, and to bring to the knowledge of the Secretary of State matters of which otherwise he would never have cognisance.

Next, as regards the constitution of the proposed Council. In the first place, the Chairman of the Prison Commissioners should, I think, have a seat upon it. It is necessary to protest against officialism working in the dark and with almost despotic power. But officialism is entitled to be heard, and to have every reasonable argument fairly considered, and the necessity imposed on the Chairman to explain and defend the action of the Board to the Council, would have a most salutary influence upon the policy of the Board, while the free criticism to which he would be exposed would be in itself a liberalising education. The Council should also include at least one eminent member of the medical profession who had devoted special attention to psychology, together with (say) two Members of Parliament. But, according to my idea, the Council should not be exclusively composed of prison specialists. On the contrary, a large majority of its members should be persons of distinction upon other grounds—men with a large experience of great affairs and keenly interested in social questions. To such men crime and the treatment of the criminal will present themselves as problems of the greatest importance, while at the same time they will be seen by them in their true relations to all the social phenomena of the period. Happily England is richly endowed with men of this class.

E. H. PICKERSGILL.

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## VIII.—CURRENT NOTES ON INTERNATIONAL LAW.

### **The United States and Spain.**

The time is hardly ripe to consider in detail the legal aspects of the general questions at issue between Spain and the United States. One or two particular points, however, are deserving of present comment.

In February last the "Sackville Incident" of 1888 repeated itself in a more acute form in the case of Señor Dupuy de Lôme, the Spanish Ambassador at Washington. It appears that a private letter written by him towards the end of last year to the Editor of the Madrid *Heraldo*, was stolen by a sympathizer with the Cuban insurgents and handed over to the Cuban Junta in New York. It was communicated by the latter to the Press on February 9th, and caused a violent outburst of ill-feeling. The letter was an outspoken criticism of President McKinley's Message to Congress on the situation in Cuba, and it contained some very indiscreet remarks upon the President himself. Amongst other things the Spanish minister said : " Besides " the natural and inevitable coarseness with which he (the " President) repeats all that the press and public opinion " in Spain have said of General Weyler, the Message shews " once more that Mr. McKinley is weak, catering to the " rabble, and a low politician who desires to leave the door " open to me and yet stand well with the jingoes of his " party."\*

The result of the publication was an interrogation of Señor de Lôme as to its authenticity, and upon his admitting it, the Washington Government at once instructed its Ambassador in Spain to demand the immediate recall of

\* *Times*, 10th February, 1898.

the Spanish minister. Previous to the presentation of that demand, however, Señor de Lôme had telegraphed to Madrid his resignation, which had been accepted by the Spanish Government. Subsequently a communication was sent by the Spanish Government to Washington, officially disclaiming and "sincerely lamenting" the conduct of its minister, and thereupon the incident was treated as closed.\*

The analogy of the case to that of Lord Sackville is remarkable. (See *L.M. & R.*, Vol. XIV., p. 109, Art. on "*Some Recent Incidents in International Law.*") It is strange that, although the letter in the present case was of a far more serious nature than Lord Sackville's, it was not, as in that case, followed by the summary and unusual remedy of handing the Ambassador his passports. The explanation may be found in the experience gained by the United States Government in the course of the earlier incident, or perhaps in the fact that the exigencies of political campaigning outweigh, in American minds, even the inherent heinousness of an offence.

By a curious irony of fate, the De Lôme affair was followed shortly afterwards† by a demand from Spain for the recall of General Lee, the American Consul-General at Havana. The United States Government curtly declined to accede to the request. There seems to have been some ground, on general principles, for the demand. General Lee's alleged sympathy with the insurgents, however laudable it may or may not have been from a moral point of view, hardly tended to qualify him, as a *persona grata*, to conduct delicate negotiations with the Cuban authorities.

The imminent possibility of War between the United States and Spain has elicited much excited discussion, based for the most part on slender knowledge, as to its effect on neutral commerce. Many writers in the daily

\* *Times*, 18th February.

† *Times*, 7th March.

press seem to imagine that the Right of Visitation and Search by Public Ships of a Belligerent was abolished by the Declaration of Paris, to which the United States and Spain (as is well-known) did not accede. The really important questions will, of course, be : whether privateering will be employed by the belligerents ; whether they will respect the principles of "Free ships, free goods" and "Enemy's ships, free goods ;" and, above all, whether neutral powers will tolerate any departure from the principles laid down in the Paris Declaration, merely because the belligerents for different reasons were not signatories of the latter ?

As the chief objection of the United States to the Declaration was that it did not go far enough in favour of neutral property, it is more than probable that they will waive any theoretical rights they may have. In such case, it is hardly likely that Spain would venture to act otherwise, or that neutral powers would permit her to do so. Incidentally, another important question is certain to arise as to the right of neutrals to allow belligerent warships to coal in their territory.

#### **Effect of Marriage on Property.**

A most interesting question arose in the recent case of *In re Nichols ; De Nichols v. Curlier*, 1898, 1 Ch. 403. A., a Frenchman, married B., a Frenchwoman, in France in 1854, both being at the time domiciled in that country. The parties being then in very poor circumstances no marriage settlement was made upon the marriage. In 1862 both A. and B. removed to England and became domiciled there, and in 1865 A. became a naturalized British subject. At the time of their removal to England their property was worth about £400. In 1897 A. died, still being domiciled in England, and by his will left his residuary property to



trustees in trust for his widow for life, and upon her death for his daughter, her husband, and children. The testator's property at death was worth nearly three-quarters of a million, and consisted of freehold and leasehold land and pure personalty.

An originating summons was taken out by the trustees to ascertain the rights of the widow as regards the movable property under the following circumstances. By French Law (which was the law of the matrimonial domicile) the rights as regards the property of the husband and wife would, in the absence of any express marriage contract, be subject to the rule of "community of goods." The material question was: "Did the change of domicile alter the legal position of the parties to the marriage in reference to the movable property?"

The case was exhaustively argued by, amongst other counsel, Professor A. V. Dicey, Q.C., for the defendants, and Kekewich, J., finally decided the question in the negative.

The point has hitherto been a matter of doubt. Practically all authorities agree that the law of the matrimonial domicile (as to the meaning of which see *Westlake*, 3rd ed., p. 68, and Dicey, *Conflict of Laws*, p. 649) *prima facie* governs the mutual rights of husband and wife to each other's existing or subsequently acquired movables. (See Dicey, rule 171.) But a dictum of Kay, J., in *In re Marsland*, 55 L.J. Ch. 582, seems to imply that such rights can always be changed by a change of domicile, and Dicey (p. 653) has suggested that possibly this would be so as regards movables acquired by the parties *during the existence of the new domicile*. The present decision, however, if not overruled, seems to conclusively override both these propositions.

The reports of the case do not make clear what precisely is the nature of the French Law of "Communauté de

biens." This seems to be a very material question as regards the rights of the widow under the particular circumstances of the case, though it does not, of course, affect the main point decided.

The subject appears to be governed by articles 1393 and 1399 to 1496 of the Civil Code; by which, in the absence of express agreement to the contrary, the property of both husband and wife is deemed to belong to both in community; and upon death of either party the common property is divided in equal shares between the survivor and the representatives of the deceased. It would seem that movable property acquired *after* the marriage does not fall into community unless it is acquired "by way of succession or gift" (Art. 1401), and that the position of after-acquired immovables depends upon the particular title by which it was acquired. In addition to the authorities referred to in the course of argument in the case, there are a few others worthy of note, decided in the American Courts and mentioned by Mr. Bodington in his "French Law of Marriage," chap. 5, particularly *Bonati v. Welch*, New York Reports, Vol. XXIV., p. 157; and *Harteau v. Harteau*, 14 Pick. 181.

#### Lis Alibi Pendens.

In *Christian v. Christian*, 78 L.T.R. 86, an application was made to our Courts by a wife who was bringing proceedings here for a judicial separation, to restrain the husband from instituting contemporaneous divorce proceedings in the Scotch Courts. Sir Francis Jeune made an order staying the latter proceedings as vexatious, pending the suit in this country. Incidentally the Court expressed the view that "matrimonial residence" without domicile is sufficient to give the English Courts jurisdiction in matters of judicial separation.

**Foreign Powers of Attorney.**

In the case of *In the Goods of Abdul Hamid Bey*, 78 L.T.R. '202, a question arose as to whether letters of administration of the property of a testator domiciled in Egypt could be granted here to an attorney appointed for that purpose under *another* power of attorney granted by the person entitled to the property under Egyptian Law. The first power of attorney in this case was made in Egypt and expressly authorised the appointment of another attorney. It was shewn that such an appointment was under the circumstances valid by Egyptian Law, and the Court therefore held it to be effectual in England and granted letters of administration accordingly. (See Dicey, *Conflict of Laws*, rule 167.)

**Lunatics out of the Jurisdiction.**

A point left open in the decision in *In re Brown* (1895) 2 Ch. 666 was decided by the Court of Appeal in *In re Agnes Maria Knight*, 46 W.R. 289. In the latter case a lady, who was resident in Jersey, owned stock and shares in this country. She was duly found by the Jersey Courts to be of unsound mind, and a curator of her person and property was appointed. By Jersey Law such curator was entitled to obtain possession of her property wherever situated. He accordingly petitioned in the English Courts for a transfer of the English property. The Court of Appeal held that the Lunacy Act, 1890, sect. 134, did not make it obligatory to order such a transfer to the foreign curator, and, under the circumstances, they refused the application. (See Dicey, rule 136.)

**Foreign Wills.**

A curious point as to the construction of Lord Kingsdown's Act (24 and 25 Vict., c. 114) arose in the

recent case of *Stokes v. Stokes and Others*, 78 L.T.R. 50.\* The testator was Mr. A. B. Stokes, a British subject, whose murder on the Congo in 1895 was the subject of recent Diplomatic negotiations. In 1894, while resident in the Congo Free State, he made a holograph will unattested. The sole question at issue in the case was whether this will was valid by sect. 1 of Lord Kingsdown's Act as being made "according to the forms required by the law of the place where the same was made."

It was proved that the Congo Free State was an independent State, and that by its Constitution the King of the Belgians had power to make decrees having the force of Law in the State. By one of such decrees, in 1891, it was provided that testamentary dispositions by foreigners might be, as to their form, made by the law of the place where they were made, and as to their substance by the law of the nationality of the testator, but "nevertheless a stranger making a testamentary act in the Congo State should have the power of following the forms provided by the law of his nationality."

By another article of the decrees mentioned, it was provided that where a matter is not specially provided for by decree, the questions which are within the competence of the Congo tribunals may be judged according to local customs and the general principles of Law and Equity. It was further shewn that the will in question would have been valid by Belgian Law. *Sir Francis Jeune* held (a) that having regard to the decrees above mentioned "any form in the absence of special provision would be sufficient which reasonably carried out the necessary requirements of testamentary disposition;" (b) that the fact that in the present case the will was valid by Belgian Law and also by "the law of many other countries" was good reason for holding that it complied with the "general principles of Law and Equity;" (c) that it was

therefore "in a form . . . required by the Law of "the Congo State;" (d) that the absence of provisions for any *specific* form by the *lex loci* does not preclude the section of Lord Kingsdown's Act from applying; and (e) that the will was therefore valid and must be admitted to probate.

#### Jurisdiction over Foreigners.

The Court of Appeal in the recent case of *Montgomery Jones & Co. v. Liebenthal & Co.*, 1898, 1 Q.B. 487, affirmed the principle laid down in the *Tharsis Co.* case (58 L.J. Q.B. 435), that an agreement by a person domiciled abroad submitting to English jurisdiction in case of future disputes arising under a contract, is valid, and that service of a writ upon an agent in England appointed by the agreement to accept service, was a good service upon the defendant. (See Dicey, rule 42.)

JOHN M. GOVER.

#### IX.—NOTES ON RECENT CASES (ENGLISH).

*Allen v. Flood*, after having been carried from *Nisi Prius* to the House of Lords, closed with a curious result. Eight judges over-ruled ten judges! That is to say, the majority (six) of the Law Lords plus the opinions of two judges of the High Court (who were summoned to assist the House), *i.e.*, eight stand against the Law Lords minority (three), plus the opinions of six judges of the High Court, and plus the judge who presided at the trial, *i.e.* ten. It is very regrettable that the opinions of the judges should have been thus divided, the question of law being of the utmost importance to a trading community. It should, however, not be forgotten that the decision is

made from the civil aspect only; from the criminal view the situation is unaltered, and, so far as we may read between the lines of the various arguments, employers may by the use of certain small technicalities obviate the possibility of a similar occurrence in future. In a subsequent case (*Lyons v. Wilkins*, heard in the Chancery Division during the month of February), the Court, whilst refusing to restrain persons from inducing workmen not to enter into contracts with employers (plaintiffs), granted an injunction restraining the officers of a Trade Union from watching or besetting the plaintiffs' works for the purpose of persuading or otherwise preventing persons from working for them. Here, already, is the thin end of the wedge.

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The attempt in *Re M.* (a solicitor); *ex parte the Incorporated Law Society* (77 L.T. 661) to strike a solicitor off the rolls in England because he had already been struck off the rolls of a Colonial Court failed, and with reason. Although the analogy of the former practice, when the three Courts of Queen's Bench, Common Pleas, and Exchequer existed, of each Court acting on the sole production of the order of the other Court in striking a solicitor off the rolls, was adduced, the Divisional Court failed to see the analogy between the Queen's Bench Division of England and a Colonial Court, and refused the application on the ground that there was no precedent for it. This judgment is consonant with the Law of Nations, as practised in the last century; for, by that law, although if there was a question of executing the decree or judgment of one State in the territory of another State, there might issue forth *Letters Rogatory* under the Seal of the Court or State directed to the Judges of the other State where a defendant was residing, requesting that execution might be awarded against him, yet if there was a question of honour or life the

judgment of a foreign Judge was never executed ; although the accused was sometimes yielded up to his own countrymen for punishment.

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The decision of *Pethick Bros. v. Dorset County Council* (77 L.T. Rep. 683) concerning extraordinary traffic is within the principle of *Laphorn v. Harvey* (49 J.P. 709) and in fact is not distinguishable from it. No doubt a large quantity of building material had to be carried from one place to another, but it was not necessarily an *extraordinary traffic*. It was traffic which might have been carried on carefully by Trenchard, the contractor, and would not necessarily be injurious. *Williams and Davies* (44 J.P. 347) appears to be contradictory, but these questions did not there arise as to the mode of transfer ; the Court only held that the carriage of timber in such quantities necessitated extraordinary traffic, and people were employed to carry it in the ordinary way, and the carrying of it in the ordinary way in which timber is carried made it extraordinary traffic. But no question arose there whether it was carried in an extraordinary way or not.

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The order of the Court of Appeal, that three persons should be receivers and managers of the Hotel Company without salary, and without security, for six months, or until further order, with liberty to apply to the Judge at Chambers to extend the time, as a sequel to the verdict in *Spokes and Others v. Grosvenor Hotel Company and Others*, is probably without precedent. It is true that, by virtue of the Judicature Act, 1873, sect. 25, sub-sect. 8, and of Order 50, R. 3, Courts have a general power in all cases, in which it may appear to be just or convenient to grant a *mandamus* or injunction, or to appoint a receiver, or to make orders for the detention, preservation and inspection

of property the subject matter of an action, and even for that purpose to enter upon lands or buildings in the possession of any party to the action, yet this is the first occasion on which under such circumstances an order has been made. Had the Court, however, refused to make the above order, the Law of England might well have been accused of folly.

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At first blush the decision of the Divisional Court in *Gayford v. Chouler* (78 L.T. Rep. 42) that upon the facts proved the appellant was properly convicted under sect. 52 of 24 & 25 Vict., c. 97, of having committed wilful or malicious damage to property may seem strange, for the result in that case differs from *Gardner v. Mansbridge* (57 L.T. Rep. 265), where the appellant was summoned for picking mushrooms to the value of 2s. from the land of the respondent, and was held to be guilty of no offence. But then there was no evidence of damage to the land or to any vegetable production growing on the land in that case. Here, however, the appellant had damaged growing grass by wilfully walking over it. There the production was a spontaneous gift of nature; here the production was industriously planted by man. Had the mushrooms been *artificially* planted the case would have been different, and the appellant might doubtless have been convicted of larceny under the Larceny Act, 1861.

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The judgment in *R. v. West* (77 L.T. 538) is quite in accord with earlier decisions of the criminal law under similar circumstances, although they do not appear to have been brought to the notice of the Court for Crown Cases Reserved. For example, a prisoner may be tried for unlawfully wounding, and under that very charge be found guilty of a mere common assault (*R. v. Taylor*, 38 L.J. M.C. 106). It is the old principle, "the greater includes the less."



An unusual clause was disclosed in a mortgage deed in the case of *Leeds Theatre of Varieties, Ltd., v. Broadbent*, that every half-yearly payment of interest should be "punctually" paid. There was no express power of sale; the provisions of the Conveyancing Act, 1881, being applicable. The first payment of the interest was nine days late, and the mortgagee (the defendant) served a notice calling in the principal. The plaintiffs moved for an injunction to restrain the defendant from selling or advertising for sale the premises comprised in the mortgage and from otherwise in any manner enforcing the same. Mr. Justice Kekewich held that the delay of nine days was not unreasonable, there had been no default in *punctual* payment. "Punctually" he held, did not necessarily mean on the particular day mentioned in the covenant. However, on appeal, the Court of Appeal held that payment "punctually," means "punctually" on the day fixed for payment, and that payment nine days after such fixed day is not good payment. This, therefore, reverses Mr. Justice Kekewich's decision, which appeared the more reasonable.

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There is a well-known rule that one person is not entitled to take a copyright picture from another's publication and use it as an advertisement for his own goods without the other's consent. Some curious facts were shewn in the case of *Henderson v. The International Fibre Chamois Co., Limited, and Messrs. T. B. Browne*. The defendants, it appeared, had taken from the "Comic Pictorial Sheet" a picture, entitled "A Little Story by a Sleeve." The defendants, the Fibre Chamois Co., were the owners of material of which ladies dresses were made, and it occurred to them that the picture would be an admirable advertisement for their material. Messrs. Browne had instructions to insert the advertisement, which they did, and when proceedings were taken, each submitted that the other was

responsible for the infringement. The Fibre Company denied that Messrs. Browne were their agents, whereas the latter averred they had the former's authority. It was held by the Divisional Court that the plaintiffs had a substantial right in this case. Another case dealing with advertisers and their advertisements is that of *Walter v. Vejos, Limited*. Here an application for an injunction was made to restrain the defendant company from publishing in any newspaper or otherwise, extracts of advertisements appearing in the *Times* newspaper in such a manner as to represent or lead to the belief that such advertisements represented the opinions of the *Times*, or of the persons conducting the same. The defendants submitted to a perpetual undertaking, which they preferred to a perpetual injunction.

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In the case of *Mercantile Agency Company, Limited, v. Flitwick Chalybeate Company*, the appellants, the proprietors of an advertising periodical called "The Colonial Buyer's Guide," sought to recover from the respondents, mineral water proprietors, damages for the non-delivery of goods pursuant to a written contract. The respondents had agreed to pay the appellants for the reservation of an advertising space in their journal by the delivery to the appellants of such goods as they might select to an equivalent amount. Several cases of Flitwick Water were ordered by appellants, but respondents declined to deliver unless appellants undertook not to sell the goods in the United Kingdom. The appellants sought to recover damages for breach of contract, or in the alternative the agreed price of the advertisements. There was alleged to be a verbal understanding that the goods were only to be sold abroad. Oral evidence could not be admitted to vary the written contract. There was no written collateral contract or agreement that the goods supplied should be used exclusively for export. The advertisement canvasser had no authority

to bind the appellants. But there may be cases where a perfectly independent oral contract has been made, not abrogating nor in any way inconsistent with the original written contract. The House of Lords adopted this view, and there was accordingly judgment for the appellants for £144, the decision of the lower Courts—the Divisional Court and the Court of Appeal—being, of course, reversed.

SHERSTON BAKER.

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## Reviews.

[SHORT NOTICES DO NOT PRECLUDE REVIEWS AT GREATER LENGTH IN SUBSEQUENT ISSUES.]

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*Private Bill Procedure: A Guide to the Procedure upon Private Bills, together with Forms, Standing Orders of the House of Commons, condensed Standing Orders of the House of Lords, Tables of Fees, Rules, etc.* By CYRIL DODD, Q.C., and H. W. W. WILBERFORCE. London: Eyre and Spottiswoode. 1898. Pp. 360. Price 7s. 6d.

There is much red tape in private bill procedure, and this work will be invaluable in dealing with it. The early part of the book contains in 84 pages a very great wealth of information. The first subject discussed is the question as to what is properly a private bill, and what schemes ought to be promoted by public bills. To discover the answer to this question by studying the collections of printed statutes, private and public, is practically impossible: a knowledge of the practice of Parliament is indispensable to the ascertainment of this distinction; but that they possess this knowledge the present writers make manifest on every page. The subject which we have mentioned is scientifically treated, and illustrated by decisions which bear the authority of the names of Denison, Peel, and Gully. The authors then proceed to a classification of private bills, which is followed by a consideration of the introduction of such measures into Parliament and their carriage through the two Houses—this being the principal subject of the work. The law and practice

of "*Locus Standi*" as administered by the Court of Referees is rather a voluminous subject for a work of the compendious character of that before us. But the main principles of it are clearly enough set forth.

The useful machinery, whose importance has considerably increased in recent times, known as a "provisional order," is briefly but lucidly treated: and the effect of the various enactments by which Her Majesty's Secretaries of State, the Board of Trade, the Local Government Board, and other authorities are empowered to grant such orders is exhibited in a convenient table.

Then follows an Appendix of the Standing Orders of both Houses, which form, of course, the vindication of many of the statements in the text. But the references to Hansard are just as numerous: and there is a great store of further information for which the authors express their gratitude to various officials of both Houses and also to certain Parliamentary agents of long experience.

We recommend Parliamentary agents in general to procure this work, which, besides the matters above enumerated, contains an instructive table of fees and some useful forms.

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*The Judicial Trustees Act, 1896, with Notes of the Practice Cases in Scotland on the Judicial Factors Acts.* By G. J. WHEELER, M.A., LL.B. London: Butterworth & Co. 1898. Pp. 255. Price 10s.

The Judicial Trustees Act, 1896, is a very short statute in six sections, only covering about two and a-half pages of the Law Reports' edition of the Statutes. The present work is more than 200 pages in length. But although the Act is short, it is important; and doubtless many questions will arise as to what ought or ought not to be done under its provisions. Now the new office of "judicial trustees" in England corresponds to that of the "judicial factors, tutors, and curators," who have for considerably more than a century been appointed by the Courts in Scotland. Mr. Wheeler has elaborately collated all the analogies by which the experience of Scotchmen in this matter may be brought to bear upon the inexperience of Englishmen; and we think that his work will often be consulted—at any rate, during the early years of working the English Act.

*The Law relating to Markets and Fairs, and therein of Auction Marts, Sale Rooms, Hawkers and Pedlars.* By L. GACHES. London: Eyre and Spottiswoode. 1898. Pp. 116. Price 2s. 6d.

Though a very small book, this is a work of considerable learning. A great deal of the old law upon this matter is as obsolete as the Court of Pie Poudre which formerly exercised jurisdiction in each market. But there is yet remaining a certain body of law, which is certain from time to time to be of importance, in relation to this subject. There are an enormous number of persons in England to whom markets and fairs are among the most important things in life. And the District Councils in many parts of England will appreciate the importance of the subject. This book should be read.

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*The Law of Meetings: Being a Concise Statement Respecting the Conduct of Meetings in General.* By GEORGE BLACKWELL, LL.B. London: Butterworth and Co. 1898. Pp. 85. Price 2s. 6d. net.

The *idea* of this book is good. Every citizen should in these days understand the ordinary rules relating to the conduct and control of a meeting, for every citizen is called upon from time to time, either by interest or duty, to take part in a "meeting," private or public. The general rules applicable to meetings ought to form part of the education of a man of the world, and now that women also are beginning to exercise the right of meeting for various purposes, it is certainly highly to be desired that they also should understand these rules, which it is worth their while to understand if it is worth their while to hold or attend meetings at all. If all meetings were regulated according to the rules given on pp. 20-23 of this work, the business transacted would be more satisfactory than at present it often is. The sense of this little book is good; it would be a useful manual, which might profitably lie on the chairman's table at meetings of various descriptions. Regarded, however, as a legal text-book, we do not consider that the work is entirely satisfactory. The propositions of law stated in the book are rather too wide. For instance, on p. 11, the vestry cases of *Stoughton v. Reynolds* and *Mawbey v. Bartet* are cited to support a general statement as to a chairman's power of adjournment and the effect of his improper adjournment of a meeting, which does not seem to us at all to follow from the actual decisions reported by Strange and Espinasse.

*The Encyclopædia of the Laws of England*; being a new abridgment by the most eminent legal authorities, under the general editorship of A. WOOD RENTON, M.A., LL.B. Volumes V. and VI. London: Sweet and Maxwell, Ltd. Edinburgh: W. Green and Sons. 1898. Pp. 517 and 522. Price 20s. net per volume.

We devoted a considerable amount of space in our last issue to laying before our readers the reasons why we considered this work was not peculiarly useful—being too large as a work of reference, and too scanty and incomplete as anything more. There is nothing in the volumes before us to alter that opinion. Mr. Justice Phillimore and Mr. G. G. Phillimore have contributed an excellent article under the heading "Ferry," but it is not of course more than a sketch of the general law upon the subject. The other articles which interested us most were that of Mr. J. M. Gover on "Hotchpot," which certainly explains the law on that subject more lucidly than we have ever seen it explained elsewhere: that of Dr. Blake Odgers, Q.C., on "Highways," and that of Master Burney on "Injunctions." The relation of heraldry to law is well discussed by Mr. Knott, and there is a very interesting essay by Mr. Herman Cohen on "Fleet Prison Marriages." All the law given is very good as far as it goes.

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*The Judicial Trustees Act, 1896, and the Rules made thereunder*; a short explanatory and critical handbook for professional and other readers. By a Solicitor. London: Effingham Wilson. 1898. Pp. 83. Price 2s. 6d.

This is a convenient little edition of the Act, and the rules relating to each section are arranged in notes to the respective sections. This will be very useful—though the "criticism and explanation" is necessarily of a very tentative description.

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*Rates and Assessments*: a guide to the Law of Parochial and Local Rates with the Practice of the Union Assessment Committee and of Rating Appeals. By L. GACHES. London: Eyre and Spottiswoode. 1898. Pp. 198. Price 2s. 6d.

The law of rating is not in our opinion quite so simple as Mr. Gaches endeavours to shew it to be; and, though a good general idea of it is given in his book, his readers must be wary

of his wide propositions and sweeping statements of law. For instance he says:—"Rates for by-gone debts and arrears are invalid." There is no such general rule. The question of what retrospective rates are to be allowed is a question of degree: and there are many cases in which they have been allowed.

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*The Law relating to Electric Lighting.* By J. SHIRESS WILL, Q.C. London: Butterworth and Sons. 1898. Pp. 189. Price 15s.

This is a careful edition of the English Acts of 1882 and 1888, and of the Scotch Act of 1890. The editor deals with Board of Trade licenses and with Provisional Orders. The last-named machinery is by far the more important in practice; and all information with regard to it will be found in this work.

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*Cassell's Family Lawyer*; being a popular exposition of the Civil Law of Great Britain. By a Barrister. London: Cassell and Co., Ltd. 1898. Pp. 1128.

The author has aimed at making this lengthy work as readable as a book of travels! The attempt at least is praiseworthy, as it is clearly stated that the book is not an endeavour to supersede the necessity for professional assistance. Certainly if the members of the ordinary household take to reading this book they will learn many things they did not know before; and the wives of England will appreciate the extraordinary decision in their favour in *Reg. v. Jackson* which is well explained. Many wise pieces of advice, such as, "*Look at the doors of your parish church*" are given; but we doubt whether the average householder will not prefer to risk things as they are rather than undertake the laborious task of reading up this work in order to be prepared for legal emergencies.

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*Ruling Cases Arranged, Edited and Annotated.* By ROBERT CAMPBELL, M.A., with American Notes by IRVING BROWN. London: Stevens and Sons, Ltd. 1898. Pp. 833. Price 25s. net.

This work is now becoming well-known. The present volume deals with "Insurance" "Interest" and "Interpretation." Case-lawyers are very uncommon now; but there would

certainly be more of them, if the profession generally were carefully to read this work, and analyse the rules laid down and the cases by which they are supported.

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*The Real Representative Law*; being Part I. of the Land Transfer Act, 1897, and a discussion on administration thereunder. By AMHERST D. TYSSEN, D.C.L. London: William Clowes and Sons, Ltd. 1898. Pp. 132. Price 6s.

This is a book which is hardly suitable, in our opinion, for the work-a-day requirements of a conveyancer. It is too discursive. But a conveyancer, or any other lawyer, who has the time to spare would do very well in sitting down in his arm-chair and carefully reading the book through; for it will certainly help to fix in his mind exactly what it is that the Legislature has effected by the first part of the new Act. The Act is full of difficulties and ambiguities which Mr. Tyssen is quick to see and appreciate. But of course until the Courts have dealt with them Mr. Tyssen's answers to the questions raised are merely speculative; and speculative opinions seem to us more often than not, to be out of place in a legal treatise. In this case, however, the author offers a "discussion" on his title-page; and he has given us a good discussion of its kind.

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*The Yearly County Court Practice*, 1898. By G. PITT LEWIS, Q.C., and C. ARNOLD WHITE. London: Butterworth & Co., and Shaw and Sons. 1898. Two Volumes. Vol. I., pp. 756; Vol. II., pp. 550. Price 25s.

This is a very careful compilation, and the chapter by Mr. Morton Turner on Costs is especially useful to practitioners. Solicitors practising in County Courts will find this chapter of great assistance in drawing up their bills of costs; and barristers arguing questions of costs will also be able to consult it with considerable advantage.

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*The American Corporation Legal Manual*. Vol. VI., 1898 [To January 1, 1898]. Edited by CHARLES L. BORGMAYER, Member of the New Jersey Bar, Newark, N.J. 1898. Plainfield, New Jersey, U.S.A., The Corporation Legal Manual Company.

The continuous increase in the number of incorporated companies in the United Kingdom is a most striking charac-



teristic of the financial and commercial development of the present times, no doubt mainly due to the facilities afforded for incorporation by means of the simple process of registration under the Companies Acts. Judging from the existing tendency it seems probable that within a short period all enterprises of any magnitude will be converted into limited companies and that the process will be extended to the majority of ordinary businesses, at least of those carried on in the larger towns. Rapid as the increase has been in the United Kingdom, it has been even more so in the United States, where in many districts it is the exception rather than the rule that enterprises should be carried on by private individuals. Concurrently a similar development of company legislation and company law has taken place. Here, at least, we possess an advantage over our relations across the Atlantic in that the United Kingdom has but one legislature to enact statutes, and but one ultimate tribunal to determine the construction of those statutes, and to decide for good or ill the rights and liabilities of companies and persons interested in them or affected by their proceedings or disputes. But the Great Republic is a conglomeration of some 45 semi-independent States (besides a few "territories"), and every one of these boasts its own legislature and its own series of courts, from lowest to highest, and it can, without regard to the legislation or the decision of its neighbours, deal with its own laws and questions arising therefrom, as its inhabitants choose to consider best. There is of course a very considerable similarity in the legislation and in the judicial decisions of the various States in reference to subjects of common and general importance as corporations and companies; but this similarity is accompanied with a sufficient amount of variation in details and sometimes in general regulations as to thereby render the subject only the more perplexing.

A consideration of Volume VI. of "The American Corporation Legal Manual" for the year 1898 emphasises these observations. The sub-title of this work describes it as: "A compilation of "the essential features of the statutory law regulating the "formation, management and dissolution of general business "Corporations in America (North, Central and South) and "other countries of the world. With special digests of the "United States, of Street Railway Laws; Building and Loan "Association Laws; also a Treatise on Receiverships." It is a portly volume, containing over 1,100 pages of close and small

print, three-fourths of which are devoted to abstracts of the salient features of the law, statutory and judicial, obtaining in the United States in reference to corporations and companies. Each State is dealt with separately by writers who are specially familiar with the legislation and the Courts of such State, and the endeavour is made to bring down the subject, including the more prominent decisions, to the year 1897. With such a vast mass of matter to deal with, it is impossible that anything more than a mere outline of essentials and a *résumé* of the more striking decisions in respect of each State can be given. What is attempted is, however, certainly done with care and apparently with great judgment and skill, and the result is a work which can be referred to for information and especially for hints and suggestions as to the general course of legislature and judicial decision in each of the different States. But, by way of precaution, it should be pointed out that, however useful the Manual is as a book of reference, Company law is everywhere full of pitfalls, and if an examination of the contents by laymen might be expected by those perusing it to render "Every man his own Lawyer," the necessary consequence would follow in most cases of the adviser having a fool for his client. This may perhaps be averted by a reference to what is somewhat startling to professional ideas in these Islands, viz., a "Special list of Counsel selected and recommended," as to whom it is stated that they "are believed by the Publishers to be in first-class standing, and are now doing or are entirely capable of doing, business involving corporate interest." The substantive part of the Manual is supplemented by a series of forms extending over 200 pages, containing drafts of many of the instruments and documents required in the ordinary course of company business. Some of these are terse and neatly framed, and brought down to the present time. Others of them exhibit that peculiarity so noticeable in many ways in connection with our Republican friends, namely the conservative instinct which causes them to preserve, even more strongly than is done in the United Kingdom, arrangements and forms simply because they are old.

The compilers of the manual are somewhat ambitious, for they have attempted to add to the main subject-matter of the book, in itself sufficient to tax the energies and the intellect of a whole group of writers, not only in about 140 pages brief notices of the statutory provisions or codes of other countries in

reference to companies, but also outlines of the patent, trade mark, and copyright laws of the world, mentioning in each case the name, address, and status of the compiler, which is probably, for practical purposes, the most important and useful part of the information given.

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*Township and Borough : being the FORD LECTURES delivered in the University of Oxford in the October Term of 1897.* By F. W. MAITLAND. Cambridge: At the University Press. 1898. 8vo. vi. and 220 pp. Price 10s.

In this book Professor Maitland has endeavoured to illustrate municipal history by an investigation of the affairs of a particular borough. For this purpose he has chosen a borough, the history of which he has had special opportunities of studying.

Mediaeval Cambridge was a tract of some five square miles around which five hundreds converged. A portion only of this tract was covered with houses. The rest consisted of two vast sheets of arable land cultivated upon the open field system; of meadows or leys which during a part of every year were commonable; and of pasture land which was never enclosed or enjoyed in severality. It was a large ville, not the largest in the shire, but the most important. It was the judicial and administrative centre of the county. Like other villes it was an agrarian unit, but it differed from them in the number of its privileges. It was no part of a hundred; but it had a court similar to a hundred court. It had also a castle, a jewry, a fair, a market, and a toll booth. It enjoyed also specific privileges granted to it by King John in the second year of his reign (*Rotuli Cartarum* i. 83 b.); but of this charter Professor Maitland says nothing. It is with a charter of the eighth year of John that he is concerned. By it the king granted to the burgesses of Cambridge the town of Cambridge with all its appurtenances to have and to hold to them and their heirs at the rent of £40 blanch and £20 *numero*.

The question is this. Was this charter a grant of the seignory of the town, or was it merely a grant of the rents and revenues which had formerly been farmed by the sheriff? The answer was given in 1803 when Mr. Justice Lawrence and a jury of merchants decided that it was a grant of the seignory. The answer was given before the days of exhaustive historical

research and was probably wrong. If the grant were a grant of the seigniority it would carry with it the right of escheat. In a borough such as Cambridge, escheats were rare, because the burgesses claimed to devise their lands like their chattels. In 1279 the jurors of the borough say that they know nothing of an article of enquiry put to them as to farmers of cities and boroughs "who by reason of the farm take the escheats and alienate or retain them." Again in 1294 the jurors, in answer to a writ of *ad quod damnum*, say that a certain alienation in mortmain would be to the damage of the king in this "that the king will lose the escheat."

It is to be regretted that none of the charters to the burgesses of Cambridge are printed in this book; the charter roll of 8 John no longer exists, and the reader can find no copy of the charter, of which Professor Maitland says so much, in the ordinary works of reference. If the work does not contain so many novelties as previous works by the same author, it certainly throws a most interesting light on the evolution of the modern corporation. The book is well printed, and contains two excellent reproductions of pictures of Cambridge and its open fields by David Loggan, the engraver.

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*Notes on the Prolongation of Letters Patent for Inventions, with the Patents, Designs and Trade Marks Acts, 1883-8, consolidated rules and forms.* By G. J. WHEELER, M.A., LL.B. London: Eyre and Spottiswoode. 1898. 1p. 309. Price 5s.

The "notes" which form the subject proper of this book are all contained in the first 33 pages. And these pages are in our opinion the most valuable portion of the work. They sum up the law of prolongation in a convenient shape; and evidently constitute the *raison d'être* of the whole volume—though it may be useful to have the statutes, rules, etc., which form the rest of the book, within the same cover.

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#### NEW EDITIONS.

**2nd Edition.** *The Student's Guide to Procedure in the Queen's Bench Division of the High Court; and as to the Law of Evidence.* By JOHN INDERMAUR and CHARLES THWAITES. London: Geo. Barber. 1898. Pp. 121. Price 5s.

The authors tell us that "this little work forms one of a series of guides to the Bar Final by the authors. The others

are—On Real Property or Personal Property, on Criminal Law, on Common Law, on Principles of Equity, and on Constitutional Law and Legal History." The student's guide to the Principles of Equity must, however, be distinguished from the larger work of Mr. Indermaur, entitled *A Manual of the Principles of Equity*, a treatise on Equity, especially written for students, and intended as a complete text-book on the subject. The book at present under review is a "Guide to the Bar Final." The subjects of the examination are well covered by the different parts of the book; and the new edition is quite up to date, as witness that portion of the work which relates to the Summons for Directions.

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**2nd Edition.** *The Law of Arbitration; being the Arbitration Act, 1889, with Notes of Statutes, Rules of Court, Forms and Cases.* By W. OUTRAM CREWE. London: William Clowes and Sons, Limited. 1898. Pp. 185. Price 7s. 6d.

This is a brief commentary upon the Act of 1889. The Act is illustrated by references to modern cases and to decisions under the old law. Some forms for complying with the different sections are inserted in the notes to those sections; and for other forms the author refers to the appropriate pages of Russell and Redman. The principal rules of the Supreme Court affecting the matter are set out in the appendix. The work is not upon a large scale; but what there is of it seems to have been carefully done.

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**2nd Edition.** *A Digest of the Law of Agency.* By WILLIAM BOWSTEAD. London: Sweet and Maxwell, Limited. 1898. Pp. 507. Price 16s.

This book consists of legal propositions in the shape of articles and illustrations thereto in smaller print, à la Sir James Stephen. The first article reads rather like a statute "in this book unless a contrary intention appears from the context, &c." We can find nothing however but good law in the whole work.

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**2nd Edition.** *The Law of Evidence.* By SIDNEY PHIPSON. London: Stevens and Haynes. 1898. Pp. 637. Price 10s. 6d.

This is a good digest of the Law of Evidence, with a convenient arrangement of instances, "Admissible" and

"Inadmissible" evidence and so forth in different cases handily arranged in parallel columns. In arguing a case which is near the line, this work will be found most serviceable.

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**3rd Edition.** *The Workmen's Compensation Act, 1897, with Copious Notes.* By W. A. WILLIS, LL.B. London: Butterworth and Sons. 1898. Pp. 96. Price 2s. 6d.

This Act does not come into force until July next. And yet this is a third edition! As there are of course no judicial decisions as yet under the Act, it would be difficult to guess what the writer has found to say in the book. The "copious notes" consist in part of tentative opinions on hypothetical cases which might occur under the Act. We do not consider that these opinions have any value whatsoever. Other notes tell us how the sections were originally drafted, which is again a matter of small interest to anybody. Any new Act of importance now always causes a rush of would-be commentators; but a commentary on the lines of the present book seems to us to be a futile undertaking. Nevertheless the author has shewn capability, as well as industry; and if he had only waited a little longer he would doubtless have produced a much more useful book.

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**3rd Edition.** *Outlines of the Law of Torts.* By RICHARD RINGWOOD. London: Stevens and Haynes. 1898. Pp. 298. Price 10s. 6d.

These outlines fulfil their purpose admirably. In the new edition we naturally look to see what the author has to say upon the great case of *Allen v. Flood*, which has revolutionised the law with which his volume deals. We think that the author has expressed most admirably the result of that case and its effect upon *Keeble v. Hickeringill* and other ancient cases bearing upon the matter. The old part of the book is too well known to require any fresh comment.

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**3rd Edition.** *Stone's Justices Manual; being the yearly Justices' Practice for 1898*: a guide to the ordinary duties of a Justice of the Peace, with tables and appendices. Edited by GEO. B. KENNETT, Solicitor. London: Shaw and Sons; Butterworth and Co. 1898. Pp. 1123. Price 25s.

When once its alphabetical arrangement is understood this is the best of the magistrates' practice-books published, and it

contains a vast amount of information. The first edition of Stone was published in a very small shape, and the volume was for a long time always reproduced in duodecimo. The present edition contains more than a thousand crown octavo pages, and it is completely up to date. Thus on page 124 we find that the work correctly sets forth the power of Justices to close roads under the Military Manœuvres Act, 1897, and the punishment to which persons obstructing the manœuvres are liable; on page 183 the provisions of the new Chaff-cutting Machines Accidents Act are given, as to the fittings requisite to secure safety and the fencing of the fly-wheel and knives: the chapter on children (pages 184 to 199) has been largely re-written in consequence of the passing of the Infant Life Protection Act, 1897, and the Dangerous Performances Act 1897; amendments of the law as to the separation of jurors in cases of felony are carefully noted on page 477; while on page 678 we find that allusion is made to the Preferential Payments in Bankruptcy Act, 1897; the Police (Property) Act, 1897, is mentioned in several parts of the book, as is also the Burglary Act, 1896, and under the head of "Vermin" the important new powers given to local authorities by Stat. 60 and 61 Vic., c. 31, are noticed, though perhaps the last-named subject is not treated quite so fully as it profitably might have been. Nor have recent judicial decisions been overlooked. *Powell v. The Kempton Park Racecourse Co., Ltd.* [1897] 2 Q.B. 242, for instance, is not merely referred to, but its effect upon the earlier cases is discussed with care and discrimination. The book may be relied on by magistrates to amply fulfil the purposes for which they require such a manual.

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**3rd Edition.** *The Laws of Insurance for Life, Accident and Guarantee, embodying cases in the English, Scotch, Irish, American, and Canadian Courts.* By J. B. PORTER, assisted by W. F. CRAIGS and T. S. LITTLE. London: Stevens and Haynes. 1898. Pp. 562. Price 21s.

This is the leading English treatise upon the law of insurance other than marine insurance; but we should like to suggest that some further distinction might usefully be made between those propositions which have authority in English case-law and those which are only vindicated by American decisions. It is true that the law on this subject is much more highly developed in

America than in our own country, as a perusal of the learned work of Mr. John Wilder May will shew; and it was, perhaps, inevitable that the author should make very frequent reference to the American law by way of illustration. But for practical purposes there can be little doubt that the book would be improved by adding—not merely by way of reference, but in the text itself—something which will shew the reader at a glance whether or no in each case the law of *England* is clear and precise upon the particular propositions under consideration.

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**4th Edition.** *A Handbook of Public International Law.* By T. J. LAWRENCE, M.A., LL.D. London: Macmillan and Co. 1898. Pp. 171. Price 3s.

This little book is admirable for its purpose. It will help students of public international law by affording an outline of the subject, and it will also tell them what books to read—the latter information being especially valuable to the beginner. It is intended to be read in conjunction with larger works, and, if so used, it will prove most valuable. The questions at the end of each chapter should form most useful test-papers for any readers intending to offer themselves for examination in the subject.

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**4th Edition.** *A Treatise on the Law of Collisions at Sea, with an Appendix containing Extracts from the Merchant Shipping Act, 1894, the Regulations for Preventing Collisions at Sea and Local Rules of Navigation for the Thames, Mersey, and Elsewhere.* By R. G. MARSDEN, of the Inner Temple, Barrister-at-Law. Stevens and Sons, Limited. 1897. Price 28s.

It is obvious that the subject of this book is one of very great importance. The branch of law of which our author treats was always peculiar and required the exposition of a specialist. And this was not only because particular statutes existed dealing with the subject, but also because the principles of the case-law relating to collisions at sea is different from the common law relating to collisions on land in several important particulars. See *e.g.*, the Woodrop series (2 Dods. 83). From the date of the first appearance in 1880 of Mr. Marsden's book it was recognised that the specialist had appeared who was qualified to give the requisite exposition. But the passing of the Merchant Shipping Act, 1894, and the coming into force of



the new rules of the road at sea since the last edition of 1891 have now made a new edition indispensable. The effect of the Act of 1894 upon the law of collisions at sea is well stated in Mr. Marsden's book. The rules of the road at sea are not to be summed up, like the rules of the road on shore, in a few short sentences; but they are in themselves an elaborate code of regulations. Mr. Marsden's task in dealing with them has been more difficult than anything which is required in the ordinary revision of a legal text-book. But it has been well accomplished. We are glad to see this treatise in a useful condition to do its work once more; and the old wine has been put into the new bottles quite as successfully as could be expected. Mr. Marsden's commentary on the new regulations is very well worthy of attention. In such cases as these the commentator is not a mere collector of cases and judicial dicta. No such material was of course to hand for a commentary on the new regulations, where they differ from the old; but the author makes pertinent remarks of his own as to the effect of the amendments—*e.g.*, as to the addition of the words "and speed" in Art. 21, an alteration in the law which, according to Mr. Marsden (and his argument seems to us most clear and logical), is of some importance to navigators of steamships.

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**5th Edition.** *Archbold's Practice of the Court of Quarter Sessions and its Civil, Criminal and Appellate Jurisdiction: with Tables of Allowances to Witnesses, Costs of Appeal, Procedure of Appeals, and of the Principal Indictable Offences Triable at Quarter Sessions.* By Sir G. SHERSTON BAKER, Bart., of Lincoln's Inn and the Western Circuit, Barrister-at-Law, Recorder of Barnstaple and Bideford. London: Shaw and Sons, and Butterworth and Co. Pp. xlviii., 703. Price 27s. 6d.

The learned editor of the new edition of this well-known work has had an experience at Quarter Sessions of upwards of a quarter of a century; besides which he is himself the President of two Courts of Quarter Session by virtue of his office of Recorder of the Boroughs of Barnstaple and Bideford. He is, moreover, a recognised authority on Quarter Sessions law. The preparation of the new edition was, therefore, we think, wisely placed in such competent hands.

Courts of Quarter Session may, not inaptly, be termed the nursery of the Junior Bar. Every Junior Barrister who

purposes practising his profession at the Common Law Bar, must begin at Quarter Sessions. It is there that the stern reality of his advocacy first dawns upon him, and he becomes accustomed to the sound of his own voice in the hushed stillness of a Court of Justice. Most barristers who have risen to eminence at the Common Law Bar, commenced their career at a Court of Quarter Sessions. Many of them speak with pride and pleasure of their early triumphs in those Courts. Briefs at Courts of Quarter Session are, usually, the stepping-stone to Briefs at Assizes. A work, therefore, upon the practice and procedure of such Courts is, to the junior practitioner, well-nigh indispensable.

The new edition, though reduced in bulk, has been so treated with careful and discriminating judgment. Superfluous and obsolete matter having been deleted to make room for new and more appropriate subjects—in some cases the result of recent legislation, in others, of judicial decision.

In this edition we observe, on comparing it with the previous one, that the text has been thoroughly revised throughout, and in many parts entirely re-written; besides which, a considerable amount of new matter has been added; amongst which we find, at pp. 34—40, the Scheme of the London County Council for regulating the holding of Courts of Quarter Session for the County of London, as provided by the Local Government Act, and approved by the Home Secretary. Useful additions to the text have also been made throughout the entire work; notably in relation to the procedure, and, with reference to the Crown Office Rules; Presentments by Grand Juries, Indictments, with numerous forms and precedents of indictments in cases triable at Quarter Sessions; all which are fresh subjects in this edition. The Appendices to the work are one of its most important and useful features. Appendix A, as to the Allowances to Witnesses at Quarter Sessions and the Costs allowed on Appeals, is, we believe, entirely new, and will be of special value to Clerks of the Peace in their taxation of Costs in Appeals. Other most useful Appendices are, a descriptive and detailed Table of the Procedure; and Appendix C, a similar Table of the Principal Indictable Offences triable at Quarter Sessions. Upon the whole this new edition appears to be a very comprehensive and useful one, not only to Junior Members of the Bar, but also to Clerks of the Peace, Solicitors, and others having business at Quarter Sessions. The work has been carefully and con-

scientiously revised throughout, and is, we believe, a thoroughly reliable guide to the practice and procedure of Courts of Quarter Session.

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**7th Edition.** *Powell's Principles and Practice of the Law of Evidence.* This edition by JOHN CUTLER, Q.C., and C. F. CAGNEY. London: Butterworth and Co. 1898. Pp. 660. Price 20s.

This well-known work has re-appeared again under able editorship. It contains a discussion, which is of great interest at the present moment, on the inconsistencies of the existing law with regard to the admission of the evidence of prisoners. A complete list of the cases, in which prisoners may go into the box, is given on page 623.

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**8th Edition.** *Principles of the English Law of Contract and of Agency in its relation to Contract.* By SIR WILLIAM R. ANSON, Bart., D.C.L. 8th Edition. With Notes of American cases by ERNEST W. HUFFCUTT. London: Henry Frowde, and Stevens and Sons, Limited. 1898. Pp. 456. Price 10s. 6d.

This established work of the Warden of All Souls needs no commendation; it has been generally accepted as the standard text-book for students upon the subject. The special interest of the present edition attaches to the American notes of Professor Huffcutt. American students are to read from the same text-book as English students—the points in which American contract law differs from English being carefully shewn in these notes. On carefully perusing the notes in question, the reader will be surprised to see how few such differences of any importance are to be found: the substance not only of the chief part of our common law, but of a very large proportion of our statute law, having been reproduced in the new world.

**11th Edition.** *A Manual of Common Law for Practitioners and Students, comprising the Fundamental Principles, with useful Practical Rules and Decisions.* By JOSIAH W. SMITH, Q.C. This edition by C. SPURLING, M.A., B.C.L. London: Stevens and Sons, Limited. 1898. Pp. 561. Price 15s.

This is one of the best of students' books, and a student who uses it in connection with the other text-books named therein in

every instance of difficulty, and who turns to the original report for all the cases referred to by the author—and the number of them is very moderate—will have a very fair working notion of what the Common Law of England is. The present edition fully maintains the high standard of the work.

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## CONTEMPORARY FOREIGN LITERATURE.

*Journal du Droit International Privé.* Paris, 1897 and 1898.

Recent numbers of this journal fully keep up its high standard. Unlike most foreign legal periodicals it contains contributions by English and American jurists of eminence, sometimes original, sometimes translated, as well as notices of English decisions of international interest. Mr. Justice Phillimore gives his opinion on the legality of seizure of a British ship by a British vessel of war during the pacific blockade of Crete, and Messrs. L. J. Scott and M. MacIlwraith conclude their interesting and trustworthy article on *La Profession d'Avocat en Angleterre*. There is perhaps no subject on which most Continental jurists are more at sea than the English system of legal education and admission to the Bar. In the review of English decisions the largest space is occupied by *Moss v. Moss*, 1897, 2 P.D. 263. French law appears to be in accordance with the English decision, following the somewhat brutal maxim *En mariage trompe qui peut*. In an exhaustive article Professor Colin of Algiers regrets that, while the Code Civil, art. 999, meets the case of a testament made by a Frenchman abroad, it omits the case of a testament made by a foreigner in France. There is nothing in the French Code corresponding to Lord Kingsdown's Act. But in a recent case in the Tribunal of the Seine (Clunet, 1895, p. 847) it was held that a will of personalty made by an Englishwoman in English form was valid. In this decision the Court seems to have practically departed from a previous decision of the Cour de Cassation in 1853, the English sequel of which is well known to English lawyers as *Bremer v. Freeman*, 10 Moore P.C. 361, the case which led to the passing of Lord Kingsdown's Act. At the end of No. XII. is a most careful and complete analytical bibliography of books and articles on International law published during 1897.

*La Giustizia Penale.* Rome, 1897-8.

As has been more than once pointed out in earlier numbers of the *Law Magazine and Review*, there are few periodicals which the English student of criminal law will find more suggestive than the Italian weekly review, *La Giustizia Penale*. Questions of evidence are treated in so entirely different a manner, and the procedure is sometimes startling to one accustomed to the English Courts. A good deal of space is occupied by proposed reforms of the jury laws. No doubt the jury is still on its trial in Italy, and there has hardly been time to frame a quite workable tribunal. The continuity of Roman names is strikingly illustrated by the name for what we should call the "panel" in Italian law. It is *albo pretorio*, a phrase which carries one back to remote days in the Roman Republic. Occasionally there are to be found reports of points of criminal law impossible in England, *e.g.*, whether the alteration of the number of a ticket in the public lottery is fraud or forgery, and whether a particular form of appointment of a procurator by the *parte civile* is good.

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*Revue Bibliographique Belge.* Brussels, August—November, 1897.

This is a periodical which deals only incidentally with law. It contains, however, a section entitled *Jurisprudence-Législation*, and under this section all legal works published in Belgium appear to be included. There are occasional notices of books published outside the limits of Belgium, chiefly French.

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*Kosmodiks, Zeitung für den Internationalen Rechtsverkehr.* Berlin, No. 1, January, 1898.

This is a new departure in legal journalism. Like *Cosmopolis*, on which it is evidently based, it contains articles of international interest in German, French and English. It will be interesting to see whether such a periodical has any chance of success. The contributors of English articles appear to be an advocate at Edinburgh and an attorney at Washington, D.C. It is a pity that one of them did not revise the editorial notices which profess to be in the English language.

*Statsvetenskaplig Tidskrift för Politik Statistik Ekonomi.* Upsala, 1897 and 1898.

These are the earliest numbers of a new Swedish periodical, which bids fair to be interesting, though its treatment of its subject matter is perhaps rather political than legal. The longest article in the first number is a criticism of a constitution drafted by Hans Järta in 1809, a very dark period of Swedish history. This is a matter which is of interest only to students of Swedish constitutional history and will not detain the English reader long. Such a reader will be more drawn to an article on the share of the Anglo-Saxon folk in the production and commerce of the world. Pessimists will acknowledge after reading it—provided of course that the figures are trustworthy—that we have so far no reason to be dissatisfied with our position in the world's markets, German competition notwithstanding. In the second number there is a review, for the most part favourable, of Mr. James Mackinnon's "The Union of England and Scotland" (Longmans, 1896). The main objection urged by the reviewer is that Mr. Mackinnon's patriotism sometimes leads him to be too considerate in his treatment of the selfishness of the Scottish peers. In the same number is a report of a curious case, in which the King of Sweden and Norway upheld a marriage of Swedish subjects at Sydney in accordance with Church of England forms, there being at Sydney no church of the Lutheran Church of Sweden.

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*Association Française du Droit Maritime.* Bulletin No. 2. By M. R. VERNEAUX, Docteur en Droit. (No place or date.)

This is a short answer to some questions on liability for collisions at sea, the questions having been addressed by the *Comité Maritime International* to national associations. Dr. Verneaux's answer is from the French point of view, but he does not hesitate upon occasion to support the English or other foreign rule.

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*La Revue Générale.* Brussels, October, 1897; March, 1898.

Although the review contains little or nothing of legal interest—except one or two brief notices of Belgian law books—the critic cannot consider the time spent on it wasted when he has had the pleasure of seeing the beautiful photogravures of Siena and

Pisa and the productions of their painters. These accompany the letterpress of very interesting articles by M. Arnold Goffin. The reproductions of some of the so-called Orcagna frescoes are a triumph of art.

### SOME WORKS OF REFERENCE.

*The Shipping World Year Book and Port Directory of the World.* 1898. Edited by Major JONES. London: *Shipping World Office*.—After glancing over this handy volume we can well believe the Editor's statement that neither labour nor cost has been spared to keep the "*Shipping World Year Book*" in the position it has long enjoyed at the head of its class. The changes and additions made in this (the twelfth) edition have been numerous and important; and the book has been increased to over 1,000 pages. The new Board of Trade Regulations for Preventing Collisions at Sea, which came into operation on the 1st July, 1897, together with Departmental Orders governing Deck Cargoes, the Surrender of Deserters Abroad, the Carriage of Grain Act, and all other important regulations affecting shipping now operative are included in the work. It goes without saying that such a manual of Trade, Commerce, and Navigation is indispensable in the Merchant's and Shipowner's office, but we think it equally indispensable to the Solicitor with a large shipping practice and to members of the Admiralty Bar. We notice that the map shewing in distinguishing colours the routes of steamers and railways throughout the world, and the products, ports, coaling stations, coalfields, etc., of all countries and colonies, has been amplified and improved, and we should think is now one of the best commercial maps of its size ever published.

*The Literary Year Book*, 1898. Edited by JOSEPH JACOBS. London: George Allen. 1898.—Whilst preserving most of the features of last year's issue, edited by Mr. F. G. Aflalo, the editor of the present volume has endeavoured to make the book of more practical utility in all directions. Indeed we are told that his endeavour throughout has been to make this issue a *repertoire* of just the sort of information most needed by literary men, and towards this end his method "has been anthological." Whether or no this method of selection will commend itself either to those who desire to use the book for practical purposes or to those who are left out in the cold by the process we are not prepared to say. On pages 124-5 we observe are given the names of some 97 writers suggested for forming an English Academy of Letters. There is one name in the list that we are sure by its presence there will cause some astonishment if not indignation amongst the 96 other writers which are bracketed with it. It would, indeed, be interesting to know from whom the proposal to include this person in such a list emanated. Apart from this the *Literary Year Book* has been well got up, it contains an excellent portrait of Mr. Ruskin, and we have no doubt will prove exceedingly useful to literary men, or at any rate, to that section of the cult who have a keen appreciation of the merits of anthology.

*Maritime Notes and Queries; a Record of Shipping Law and Usage for the Year 1897.* Vol. XI. London: Spottiswoode & Co. 1898.—An admirable

book of reference compiled from the *Shipping and Mercantile Gazette* ostensibly for the use of shipowners and shipmasters, brokers, charterers, and consignees. We may also add lawyers, for the work must be of considerable practical utility to solicitors and barristers with an Admiralty or shipping practice. The present volume contains, *inter alia*, a selection of the letters and articles which appeared in the *Shipping Gazette* during the year, also a reprint of all maritime legislation and regulations passed in that period, together with an index of the year's judicial decisions. This index in its double form has evidently been compiled with care and considerable labour, and should be of more than temporary use.

*Sell's Dictionary of the World's Press*, 1898. London: 167, Fleet Street.—This is one of our most useful annuals of commercial knowledge. To give a reliable record of the World's Press is rather a large order, but Mr. Sell has succeeded admirably in doing so. Apart from the mere directory portion of this bulky volume, there are readable articles on such subjects as "Newspaper Companies as Investments," "History of Journalism, &c." We note that Mr. Sell has received permission to use on his publication the Royal Arms, together with the words, "Under the Royal and gracious patronage of Her Majesty Queen Victoria, Empress of India."

*The Advertiser's A.B.C.: The Standard Advertisement Press Directory*, 1898. London: T. B. Browne, Limited, 163, Queen Victoria Street. This is the twelfth edition of this well-known work, which is as usual handsomely bound in red cloth, with gold lettering, and is as bulky as ever. There is a complete list of the newspapers, magazines, &c., published in the United Kingdom. Another section deals with the colonial and foreign Press, and the work is interspersed with articles on the subject of advertising, from which business men can get much valuable information on a branch of trade which is fast becoming a fine art.

Herbert Fry's "Royal Guide to the London Charities, shewing, in Alphabetical Order, their Name, Date of Foundation, Address, Objects, Annual Income, Chief Officials, etc." Edited by JOHN LANE. London: Chatto & Windus. 1897. Pp. 398. (Price 1s. 6d.) How to obtain assistance for the needy and deserving is an enquiry which requires but too often to be made. The royal guide will be of immense value in every such enquiry. The present volume is the 34th annual edition.

*New Catalogue of British Literature*, 1897. Edited by CEDRIC CHIVERS and ARMISTEAD CAY. London: Cedric Chivers. 1898. Pp. 375.—We have here a careful record of the publications of the year 1897, indexed according to subjects and titles, as well as by the authors' names. This is the second annual volume, and the work seems to be a useful one.

*The English Catalogue of Books for 1897*. London: Sampson, Low, Marston & Co., Lim. 1898. Pp. 236. (Price 5s. net.) Every book in this catalogue will be found in one and the same list under the author's name and under the title of the book, in correct alphabetical arrangement. This is the 61st year of the issue of the book, and this volume and its predecessors form together a most valuable work of reference.

*The County Councils, Municipal Corporations, Urban District, Rural District and Parish Councils Companion, Magisterial Directory, Poor-Law Authorities*



*and Local Government Year Book for 1898.* London: Kelly's Directories, Limited, and Simpkin, Marshall, Hamilton, Kent & Co., Limited. 1898. Pp. 1,175. (Price, 10s. 6d.)—This seems to contain all possible things which could be expected in such a work; and will be found of the greatest service to all those who may have occasion to consult local authorities or to correspond with persons holding official positions in local bodies.

*Willing's British and Irish Press Guide.* London: James Willing, Jun., Limited. 1898. Pp. 300. (Price, 1s.)—That we may not argue ourselves unknown, we will at once state that we know this work, and know it to be a most reliable and thorough one. The 25th annual issue seems to be as good as its predecessors.

*Whitaker's Directory of Titled Persons for the Year 1898.* London: 12, Warwick Lane, Paternoster Row. 1898. Pp. 470. (Price, 2s. 6d.)—This work, which was first published last year by the compilers of the world-famous almanack, is a most complete directory to the class of "titled persons," together with all rules of precedence, &c., and a large quantity of similar information. It is a worthy companion to the almanack, and we are glad to welcome its re-appearance.

*Walford's Shilling Peerage for 1898* (44th year of publication); *Shilling Baronetage* (ditto); *Shilling Knightage* (ditto); and *Shilling House of Commons* (ditto). Edited in each case by a Graduate of the University of London. Chatto & Windus. 1898. Pp. 250, 259, 306, and 198.—Four uniform little volumes at so small a price containing catalogues of persons whose names are of general interest must, we should imagine, be always in constant demand: they deserve all success, and we should like to see lists of the different professions, etc., brought within so moderate a compass and so proportionately cheap.

*Who's Who, 1898.* Second year of new issue. Edited by DOUGLAS SLADEN (50th year). London: Adam & Charles Black. 1898. Pp. 846. (Price 3s. 6d. net.)—Here any reader may satisfy his curiosity as to who and what his neighbours may be, if his neighbours are persons of any importance or well-known in England. The compilation is very full and satisfactory.

Owing to want of space reviews of the following books are held over until next issue:—*Lord Cochrane's Trial before Lord Ellenborough*, Smith, Elder and Co.; *Political Crime*, T. Fisher Unwin; *Prisoners on Oath*; *Judge Jeffreys*, William Heinemann; *Paul Beck*, C. Arthur Pearson, Limited; *The Jewish Law of Divorce*, David Nutt; *Law of Wills*. Boston: Little, Brown & Co.; *Law of Trusts and Trustees*, Jordan and Sons; *Snell's Equity*, Stevens and Haynes; *Code Pleading*. Cincinnati: W. H. Andrews and Co.; *Law of Crimes and Criminal Procedure*. Baltimore: Harold B. Scrimger; *Joyce on Insurance*. 4 vols. San Francisco: Bancroft-Whitney Co.; *Cuestiones de Derecho Internacional, &c.*, Toledo: Menor Hermanos; *Istituzioni di Diritto Civile Italiano*, Florence: Bernardo Seeber.

Other publications received:—*London L.L.B. Examination Papers, 1886-1898.* London: W. B. Clive; *The Newcastle Chronicle Almanac and Year Book, 1898; Professions for Boys and How to Enter Them.* London: Beeton & Co., Limited; *Public Speeches of Sarvadhicari.* Calcutta: Nababibhakkar Press; *Reports of the American Bar Association.* Vol. XX. 1897. Philadelphia: Dando Printing and Publishing Co.

# Quarterly Digest

OF  
REPORTED CASES  
IN THE  
Law Times and Law Reports  
FOR JANUARY, FEBRUARY, AND MARCH, 1898.

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## D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the reference to the additional report is given in the Index only, after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

### Administration:—

- (i.) **P. D.**—*Right of Creditor* "Information and Belief" that Assets exist.—A general allegation of information and belief in the existence of assets of a deceased within the jurisdiction will not entitle a creditor to letters of administration in opposition to the next of kin. *In the goods of Foy*, 78 L.T. 49.

### Administration de bonis non:—

- (ii.) **P. D.**—*Previous Grant Application for Fresh Grant.*—The next of kin of a deceased were a son and a daughter, both resident out of the jurisdiction. The attorney of the son took out letters of administration, but died before further steps were taken. The attorney of the daughter applied for a grant *de bonis non* until she could come to this country. The registrar refused the application, but the Court made the grant. *In the goods of Albert F. Barton*, L.R. [1898] P. 11; 77 L.T. 629; 78 L.T. 81.

### Animals:—

- (iii.) **Q. B. D.**—*Swine*—"*Holding a Sale*"—*Diseases of Animals Act, 1894* (57 & 58 Vict., c. 57,) s. 22, sub-s. 19 *Markets and Fairs (Swine Fever) Order.*—The Board of Agriculture issued an order under sect. 22 of the Diseases of Animals Act that "no . . . sale or exhibition of swine shall be held in a district to which this order applies." A person taking pigs in a cart along a highway sold some within the district. Held that though there was a selling there was no "holding a sale." *McLean v. Monk*, 77 L.T. 663.

### Arbitration:—

- (iv.) **C. A.**—*Special Case*—*Arbitration Act, 1889* (52 & 53 Vict., c. 49), ss. 10, 11, 19.—Sect. 19 of the Arbitration Act impliedly authorises a party to require the arbitrator at any stage to state a case on a matter of law. And where such an application has been made *bonâ fide* and not for the sake of delay, the arbitrator who refuses the application, or by summarily making his award precludes the party from himself applying to the Court, is guilty of a breach of duty.—*In re Palmer and Co. and Hosken & Co.*, L.R. [1898] 1 Q.B. 181.

**Banker's Book:—**

- (i.) **C. A.** — *Discovery — Inspection of Banking Account — Banker's Book Evidence Act, 1879* (42 & 43 Vict. c. 11), s. 7 (1).—Inspection of entries in bankers' books will in general be granted only when the entries are in an account which is in substance that of one of the parties to the litigation. Any jurisdiction which the Court may have to order inspection of the account of a person not concerned in the litigation will be exercised with the greatest caution.—*Pollock v. Garle*, L.R. [1898] 1 Ch. 1.

**\* Bankruptcy:—**

- (ii.) **Q. B.**—*Payment to Accountant who had knowledge of Act of Bankruptcy.*—Payment made to an accountant for preparing accounts and sending out notice of suspension is not protected within *in re Sinclair*; *e. p. Payne* (53 L.T. rep. 767; 15 Q.B.D. 616), and may be recovered by the Trustee in bankruptcy.—*In re White*; *e. p. Ward and Afford*, 78 L.T. 25.
- (iii.) **Q. B.**—*Personal Earnings—Assignment not Perfected—Title of Trustee—Bankruptcy Act, 1883* (46 & 47 Vict., c. 52), s. 50, sub-s. 5.—A trustee in bankruptcy detained a stop order on a sum of money adjudged to the debtor as damages in an action for commission earned in a new business taken up since his bankruptcy. Two adverse claims were set up; one by a person to whom the bankrupt had before the trial assigned his claim in the action; and the other by a person to whom the bankrupt had agreed to give half commission on any business effected through that person's introductions. Neither claimant had given notice of assignment. *Held*, that the commission so acquired by the bankrupt was in the nature of earnings from a trade or business, and passed to the trustee; that the first claim not having been perfected by notice could not prevail against the trustee, and that the second claim was not a charge on the particular fund.—*Mercer v. Faus Colina*, 78 L.T. 21.
- (iv.) **Q. B. D.**—*Application to set aside a Bankruptcy Notice—Bankruptcy Act, 1883, s. 4, sub-s. 1—Rules 1886 and 1890, rr. 138 (20); 139, Form 8.* The grounds mentioned in the Act and the Rules are the only ones on which a bankruptcy notice can be set aside. The fact that it might be fair and right to grant by way of indulgence time to the debtor to make a proposal, is not a sufficient reason for adjourning an application to set aside a notice.—*In re Cole*; *e. p. Attenborough*, L.R. [1898] 1 Q.B. 290; 78 L.T. 23.
- (v.) **C. A.**—*Execution—Service of Bankruptcy Notice—Bankruptcy Act, 1890* (53 & 54 Vict., c. 71), s. 11, sub-s. 2—*Bankruptcy Rule 90.* When execution has been levied, notice of a bankruptcy petition by or against the debtor is well served upon the sheriff at any time before midnight on the last of the fourteen days during which he must return the proceeds of the execution. *Lole v. Betteridge*; *Mollam claimant*, L.R. [1898] 1 Q.B. 256; 77 L.T. 548.
- (vi.) **C. A.**—*Bankruptcy Notice—Scotch Decree Registered in England—Judgments Extension Act, 1868* (31 & 32 Vict., c. 54), ss. 3, 4—*Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—A certificate of a decree obtained in Scotland which has been registered in the High Court under the Judgments Extension Act, 1868, s. 3, is not a final judgment within s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883, on which the creditor can issue a bankruptcy notice. *In re Watson*; *e. p. Johnston*; *Johnston v. Johnston*, 67 L.T. Rep. 519; L.R. [1893] 1 Q.B. 21 followed.—*In re A Bankruptcy Notice*, L.R. [1898] 1 Q.B. 383; 77 L.T. 710.
- (vii.) **Q. B.**—*Secured Creditor—Security not Valued—Inadvertence—Bankruptcy Act, 1883, schedule 1, r. 10.*—An assignee of a secured creditor valued his security, owing to false information, at nil. *Held*,

that this was not "inadvertence" within the meaning of schedule 1, r. 10.—*In re Piers*; *e. p. Piers v. Read*, 78 L.T. 21.

- (i.) **Q. B.**—*Insolvent Estate—Executor's Right of Retainer in Specie*—*Bankruptcy Act*, 1883, s. 125.—Where the estate of a testator is less in value than the amount of a debt due from him to the executor, the executor may exercise his right of retainer by appropriating the estate in specie.—*In re Gilbert*; *e. p. Gilbert*, L.R. [1898] 1 Q.B. 282; 77 L.T. 775.
- (ii.) **C. A.**—*Equitable Assignment of Judgment Debt—Bankruptcy Notice*—*Bankruptcy Acts*, 1883, s. 4, sub-s. 1 (g); 1890 (53 & 54 Vict., c. 71), s. 1.—A judgment creditor who makes an equitable assignment of his debt is still a creditor within sect. 4, sub-sect. 1 (g) of the *Bankruptcy Act*, 1883, as explained by sect. 1 of the *Bankruptcy Act*, 1890, and is entitled to serve a bankruptcy notice on the debtor. *E. p. Dearle*; *in re Hastings* (14 Q.B. Div. 184) followed.—*In re Palmer*; *e. p. Brims*, L.R. [1898] 1 Q.B. 419; 77 L.T. 709.
- (iii.) **C. A.**—*Rescission of Receiving Order without Public Examination of Debtor—Bankruptcy Acts*, 1883, s. 104; and 1890, s. 8, sub-s. 6.—A registrar in bankruptcy has jurisdiction to rescind a receiving order, notwithstanding that the debtor has not been publicly examined. (Rigby, L.J. dissenting).—*In re Izod*; *e. p. The Official Receiver*, L.R. [1896] 1 Q.B. 241; 77 L.T. 640.
- (iv.) **C. D.**—*Property Acquired by Undischarged Bankrupt unknown to Trustees—Assignment after Discharge*.—An insolvent in the Colony of Victoria assigned to the plaintiffs for good consideration after his discharge, property in England to which he became entitled before his discharge. The plaintiffs knew that the assignee in bankruptcy was unaware of the insolvent's interest in the property which they were acquiring. The law in the Colony affecting the question is practically the same as the English bankruptcy law. *Held*, that the plaintiffs' purchase was "bona fide and for value" within the rule in *Cohen v. Mitchell* (25 Q.B.D. 262; 63 L.T. Rep. 206), and that they were entitled to the insolvent's interest.—*Hunt v. Fripp*, 77 L.T. 517.
- (v.) **Q. B.**—*Practice—Costs of Stranger to Bankruptcy—Power of Board of Trade to Review Taxation—Bankruptcy Rules*, 1886 and 1890, rr. 117, 124.—*Bankruptcy Act*, 1883, s. 73, sub-s. 3. Rule 124 of the *Bankruptcy Rules*, 1886 and 1890, which enables the Board of Trade to have reviewed by a taxing-master a bill of costs or disbursements which has been taxed in a county court, does not apply to the costs of proceedings taken by the trustee against a stranger to the bankruptcy.—*In re Hunt*; *e. p. The Board of Trade*, L.R. [1898] 1 Q.B. 267.

### Bills of Exchange:—

- (vi.) **Q. B. D.**—*Action on Consideration—Bill not in Hands of Plaintiff at Commencement*.—Where a bill of exchange, which has been given for the price of goods bought, is dishonoured, an action will not lie for the price if the bill is, at the commencement of the action, outstanding in the hands of a third party, even though it comes into the possession of the plaintiff before trial.—*Davis v. Reilly*, L.R. [1898] 1 Q.B. 1.
- (vii.) **Q. B.**—*Liability of Joint Maker of Promissory Note, whose Signature is Obtained by Fraud—Bills of Exchange Act*, 1882 (45 & 46 Vict., c. 61), s. 29.—A "holder in due course" is a person to whom a bill or note is negotiated after completion by the immediate parties. A payee is therefore not a holder in due course. A person not guilty of want of care, who has been fraudulently induced to sign a note or bill under the impression that he was merely witnessing the signature of the joint maker of the note or bill to another document, is not responsible to the payee or to a holder in due course. *Foster v. Mackinnon*, 20 L.T. Rep. 887; L.R. 4 C.P. 704 followed.—*Lewis v. Clay*, 77 L.T. 658.

**Bill of Sale:—**

- (i.) **Q. B.—Bankruptcy—True Consideration—Payment off of Prior Bill—Repayment of Principal and Interest by Periodical Instalments—Redemption.**—Where the money consideration for a bill of sale is handed to the grantor, the fact that the bulk is immediately returned in discharge of a previous bill of sale need not be expressed. If the principal and interest are to be discharged by fixed periodical instalments, the holder is in the same position as if the date of repayment which can be gathered by calculation had been specifically stated, and the bill of sale can be redeemed only by the payment of the whole of the instalments.—*In re Davies*; *e. p. The Equitable Investment Co., Limited*, 77 L.T. 567.

**Brewer's Lease:—**

- (ii.) **C. D.—Tied House—Assignment—Construction.**—A lease of a public-house contained a covenant that the lessee and his assigns would deal exclusively with the lessor, a brewer, and his successors in business for beer; and it was declared that the expressions "lessor" and "lessee" should be deemed to include the respective executors, administrators and assigns. The lessor assigned the reversion of the house to a brewery company, but continued to carry on his business as a brewer. *Held*, that the brewery company, as assignees of the lessor, was entitled to enforce the covenant and compel the lessee to deal exclusively with them. *The Birmingham Breweries, Limited, v. Jameson*, 78 L.T. 87.

**Charity:—**

- (iii.) **C. D.—"Ecclesiastical Charity"—Local Government Act, 1894 (56 & 57 Vict., c. 73), s. 75.**—A charity was founded for the benefit of persons (1) who regularly attended service at their parish church, and (2) received the communion, and (3) lived a godly life. *Held*, that though qualifications 1 and 3 might be possessed by others than members of the Church of England, the second could not; and that the charity was an ecclesiastical charity within the Local Government Act.—*In re Perry's Almshouses Charity*, 78 L.T. 103.

**Coal:—**

- (iv.) **Q. B. D.—Weights and Measures Act, 1889 (52 & 53 Vict., c. 21), s. 22—Weight of Wagon.**—The Weights and Measures Act, sect. 22, sub-sect. 1, requires that when any quantity of coals exceeding two hundredweight is sent out for sale in bulk, the vendor shall cause the vehicle and contents to be weighed and the result shewn, with the tare weight of the wagon, on a ticket supplied to the purchaser. A coal merchant, selling under these conditions, described the wagon weight as 20 cwt., but on a weighing after delivery, it appeared that the wagon was 28 lbs. less than the weight stated, and although the vendor had thus delivered 28 lbs. of coal more than he charged for, he was fined by the justices under sub-sect. 2 of the same section for not describing the correct weight. The conviction was quashed on appeal, it being held, that the weighing should be performed near the place from which the coals are brought and not after delivery.—*Knowles & Sons, Limited, v. Sinclair*, L.R. [1898] 1 Q.B. 170; 77 L.T. 624.

**Colonial Law:—**

- (v.) **P. C.—New Zealand—New Zealand Criminal Code, 1893, s. 24.**—A jury had found, but without evidence to warrant the finding, that a married woman had acted under her husband's control in the commission of an offence for which husband and wife were jointly charged. *Held*, that leave had been granted under a misapprehension.—*Annis Brown v. Attorney-General for New Zealand*, L.R. [1898] A.C. 284.

- (i.) **P. O.**—*New South Wales—Crown Lands Act, 1889 (No. 31 of 1889), s. 8, sub-s. 6—Rabbit Act, 1890 (No. 29 of 1890), s. 5, sub-s. 1, 2, 3—Special Case.*—The Land Appeal Court of New South Wales has jurisdiction to state a case for the opinion of the Supreme Court in proceedings under the New South Wales Rabbit Act, 1890.—*Hill and Co. v. Dalgety and Co.*, 77 L.T. 541.
- (ii.) **P. O.**—*Canada—Appointment of Queen's Counsel.*—It is within the authority of a Provincial Legislature to empower by Act the Lieut.-Governor to appoint Queen's Counsel and to issue patents of precedence within the province; and the exercise of such a power by the Lieut.-Governor is not an encroachment on the prerogative of the Crown. *Attorney-General for Canada v. Attorney-General for Ontario*, L.R. [1898] A.C. 247; 77 L.T. 539.

**Company:—**

- (iii.) **C. D.**—*Debentures—Sinking Fund—Construction.*—A company by its prospectus offered bonds "redeemable within 17 years by half-yearly drawings . . . by the application of a sinking fund of £5,000 per annum." The bonds stated on the face that "a sinking fund . . . shall be established and to the credit thereof the company shall in each half-year carry the sum of £2,500 which shall be applied in redeeming . . . so many of the said debentures as the sum from time to time standing to the credit of such sinking fund shall suffice to pay off." For a time the company credited the sinking fund with a sum equal to the interest released by the redeemed bonds; but subsequently discontinued the practice. It was shewn that without this addition to the £5,000 a year the bonds could not be cleared off in 17 years. *Held*, that the contract was contained in the bond alone, and that the prospectus could not be looked to for the construction of the bond; that even if it could the words, "redeemable within 17 years," meant only that the company would have the option to redeem; and that neither in the bond nor in the prospectus was there a contract to form an accumulating sinking fund.—*Morrison v. Chicago and North-Western Granaries' Company, Limited*, L.R. [1898] 1 Ch. 268.; 77 L.T. 677.
- (iv.) **C. D.**—*Debentures—Floating Security—Equitable Mortgage—Priorities.*—A company issued debentures charged on all its property as a floating security, with a restriction that mortgage charges could not be created with priority over the debentures. The company afterwards deposited as security title deeds with their bankers, who had no notice of the existence of the debentures. Subsequently in a debenture holders' action a receiver was appointed. *Held* that the debenture holders could not set up their prior charge against the equitable mortgage, and the bank having the stronger equity were entitled to priority.—*In re Castell and Brown, Ltd.*; *c. p. Union Bank of London*, 78 L.T. 109; L.R. [1898] 1 Ch. 315.
- (v.) **C. D.**—*Debentures—Agreement by Company to Issue on Demand—Delay in Claim—Holder in Equity.*—The holder of a mortgage debenture of the first series in a company, advanced money to the company on promissory notes and an undertaking to issue to him at any time when called upon debentures of a second series to the amount of his advance. He joined in a debenture holders' action, on account of his first series debenture without raising any further claim, and obtained judgment. He then claimed after a receiver and manager was appointed, to have an interest in the second series of debentures according to agreement. *Held*, that he was a holder in equity on the second series to the amount of his advance.—*Pegge v. The Neath and District Tramways Company, Limited*; *Pegge's Claim*, L.R. [1898] 1 Ch. 183; 77 L.T. 550.
- (vi.) **C. A.**—*Debenture Holders to Appoint Receiver—Jurisdiction of Court.*—If it is shewn that a power conferred on debenture holders to appoint

a receiver has been exercised otherwise than for the common benefit, the Court has jurisdiction to appoint its own officer as receiver.—*In re The Maskelyne British Type Writer, Limited*; *Stuart v. The same Company*, L.R. [1898] 1 Ch. 133; 77 L.T. 579.

- (i.) **C. D.—Winding-up—Promoter and Officer—Secret Profit—Statutes of Limitation—Trustee Act, 1888** (51 & 52 Vict., c. 59), s. 8—*Companies (Winding-up) Act, 1890* (53 & 54 Vict., c. 63), s. 10.—A person who was one of the promoters and temporarily the secretary of a company received with the knowledge of the other promoters who were directors of the company a sum of money from the vendor. The date and parties to the agreement under which he received the money were mentioned on the prospectus. *Held*, that the statement on the prospectus was not a sufficient disclosure to the shareholders; that the defendant could not avail himself of the Statutes of Limitation either under sect. 8 of the Trustee Act, 1888, or under the rule in *Metropolitan Bank v. Heiron* (43 L.T. Rep. 676); L.R. 5 Ex Div. 319; that his services not being meritorious could not be set off *contra*; and therefore that he was liable as a promoter who had received secret profit.—*In re Sale Hotel and Botanical Gardens, Limited*; *Hesketh's case*, 77 L.T. 681.
- (ii.) **C. D.—Winding-up—Special resolution under s. 5 of Companies Act, 1879** (42 & 43 Vict., c. 76)—*Claims of Mortgage Debentures on Uncalled Capital*.—A company by special resolution declared that a sum of £5 per share should be called only for the purposes of a winding-up. The company subsequently issued debentures charged on all its property, including uncalled capital. Later a winding-up order was made, and a debenture holder applied to have it declared that the debentures were a first charge on this £5 per share. *Held*, that the passing of a special resolution under sect. 5 of the Act of 1879 creates a statutory inability in a certain event to call up capital for any purpose except a winding-up, and that the debenture holder's application therefore failed. *In re Pyle Works* (62 L.T. Rep. 887; L.R. 44 Ch. Div. 534) followed. *Newton v. Debenture Holders of Anglo-Australian Co.—Bartlett v. Mayfair Property Co., Limited*, 77 L.T. 652.
- (iii.) **C. D.—Winding-up—Company Defunct—Companies Act, 1880** (43 & 44 Vict., c. 19), s. 7—*Companies Winding-up Rules, 1890*, r. 35.—Where under sect. 7 of the Companies Act, 1880, a company has been struck off the register, the remedy of a creditor is to petition for a winding-up order. Special directions as to service must be obtained.—*In re Anglo-American Exploration and Development Co.*, L.R. [1898] 1 Ch. 100.
- (iv.) **C. D.—Winding-up—Articles of Association as to Distribution of Assets**.—The articles of association of a company with shares of £1 each provided that on a winding-up the surplus assets should be distributed to the shareholders in the ratio of the capital paid, or which ought to have been paid, by them respectively; 25,000 shares were fully paid up and 5s. per share was paid on 100,000 shares. On the winding-up it was *held* that a call of 3s. per share must be made on the 100,000 shares so as to make the amount called up thereon 8s. per share; that the sum so accumulated should be applied to repaying 12s. per share on the 25,000 shares, and that any surplus should be divisible equally on the whole 125,000 shares.—*In re Anglo-Continental Corporation of Western Australia*, L.R. [1898] 1 Ch. 327.
- (v.) **C. A.—Winding-up—Right to Petition—Companies Act, 1862**, s. 82.—Decision of C. D. (23, 84, ii.) affirmed.—*In re Peeveril Gold Mines, Limited*, L.R. [1898] 1 Ch. 122; 77 L.T. 505.
- (vi.) **C. D.—Winding-up—Contributors—Fraud**.—A person joined an institution under the mistake, wilfully fostered by the institution, that he was becoming a member of another society. *Held*, that there was no contract, and that he was entitled to have his name removed from

the list of contributories on a winding-up.—*In re International Society of Auctioneers and Valuers*, L.R. [1898] 1 Ch. 110; 77 L.T. 528.

- (i.) **C. D.**—*Winding-up—Contributories—Conditional Application for Shares.*—A company allotted shares to an applicant without fulfilling a condition which he imposed. No notice of allotment was sent to him, and he made no payment on account of the shares, but served notice under sect. 35 of the Companies Act, 1862, to have his name removed from the register, not on the ground of non-performance of condition, but of misrepresentation in the prospectus. Before the motion was heard a petition was presented to wind-up the company, and he unsuccessfully opposed it as a contributory. *Held*, that on the ground of non-compliance with the condition there was no contract between him and the company; that he was not estopped from denying that he was a shareholder; and that he was entitled to have his name removed from the list of contributories. *Foulkes v. Quartz Hill Gold Mining Co.* commented on.—*In re Thomas Edward Brinsmead & Sons, Limited; Tomlin's Case*, L.R. [1898] 1 Ch. 104; 77 L.T. 521.
  - (ii.) **P. C.**—*Winding-up in Colonies—Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict., c. 104).*—The Joint Stock Companies Arrangement Act does not extend to the Colonies, and proceedings under it in the English Courts cannot be pleaded as a defence to an action by a creditor of a Colonial company in a Colonial Court.—*New Zealand Loan and Mercantile Agency Company v. Morrison*, 77 L.T. 603.
  - (iii.) **C. D.**—*Inspection of Register of Shareholders—Right to take Notes, Companies Act, 1862 (25 & 26 Vict., c. 89), s. 32.*—The right of inspection, whether by common law or by statute, implies, in the absence of express prohibition, the right to take notes or a copy of the document which there is a power to inspect. The right of a member of a company under sect. 32 of the Companies Act, 1862, to require a copy of the register of shareholders is an additional right. A company which had supplied under sect. 32 of the Act a list of holders of shares at the date of the transcript, but had refused to let notes be taken of entries in the register of shareholders which had been ruled out were restrained from persisting in the refusal.—*Boord v. The African Consolidated Land and Trading Company*, 77 L.T. 553.
  - (iv.) **C. A.**—*Will—Declaration that Shares shall carry Dividend Accruing at Testator's Death—Apportionment Act, 1870 (33 & 34 Vict., c. 35), ss. 2, 5, 7.*—A company registered under the Companies Act, 1862, is a public company within the meaning of sect. 5 of the Apportionment Act, 1870. A testator left shares in trust, with a declaration that they should carry the dividend accruing at his death. *Held*, that the dividend must be treated as income and not as capital.—*In re Leysaght; Leysaght v. Leysaght*, L.R. [1898] 1 Ch. 115; 77 L.T. 687.
  - (v.) **C. D.**—*Directors' Fees on Winding-up—Companies Act, 1862 (25 & 26 Vict., c. 89), s. 38, sub-s. 7.*—Articles of association of a company required directors to be shareholders, and provided that their remuneration should be an annual sum to be paid out of the funds of the company. *Held*, that these provisions were part of the contract between the company and the directors, who were entitled to rank as ordinary creditors in respect of the remuneration due to them. *In re Dale and Plant*, 62 L.T. 215; 43 Ch. Div. followed; *c. p. Cannon*, 53 L.T. 340; 30 Ch. Div. 629, distinguished.—*In re New British Iron Co.; c. p. Beckworth*, L.R. [1898] 1 Ch. 324.
- Conspiracy:—**
- (vi.) **Q. B.**—*Conspiracy to do an Act which is not an Actionable Wrong.*—An act not criminal which would have given no right of action if done without preconcert does not become actionable when done by conspiracy. *Kearney v. Lloyd*, [1900] 26 L.R. Jr. 268, approved.—*Hutley v. Simmons*, L.R. [1898] 1 Q.B. 181.



**Conversion:—**

- (i.) **Q. B. D.**—*Sale of Pledge with knowledge of Pawnor—Action against Executor for Conversion.*—The pledger of an article sold it with the knowledge, but against the wish of the pawnor. The latter tendered to the executor of the pledge more than six years after the sale the amount of the loan and interest. *Held*, without dealing with the Statute of Limitations, that an action for conversion would not lie against the executor as he never had any interest or property in the article claimed.—*Hinchcliffe v. Sharp*, 77 L.T. 714.

**County Court:—**

- (ii.) **Q. B. D.**—*Practice—Appeal—County Courts Act, 1888 (51 & 52 Vict., c. 48), s. 120.*—No appeal lies from a county court on the ground that the judge in his summing up failed to give the jury proper directions on a point of law. Objection should be taken at the time the judgment is declared.—*Clifford v. Thames Iron Works and Shipbuilding Co.*, L.R. [1898] 1 Q.B. 314.
- (iii.) **Q. B. D.**—*Practice—Solicitor—Action on Bill of Costs—Statutory Defence—Solicitors Act, 1843 (6 & 7 Vict., c. 78), s. 37—County Court Rules, 1889, O. x., rr. 10, 18.*—In an action by a solicitor on his bill of costs a defence that a signed bill of costs was not, as required by sect. 37 of the Solicitors' Act, delivered one month before action, is a statutory defence within the meaning of O. x., rr. 10 and 18, of the County Court Rules, 1889, notice of which must be given.—*Lewis and Davies v. Burrell*, 77 L.T. 626.
- (iv.) **Q. B. D.**—*Tort—Claim under £20—Judgment with Injunction—Appeal against Injunction without Leave—County Courts Act, 1888, s. 120.*—Where in a county court action for tort damages are given under £20, and an injunction granted, the defendant can without leave of the judge appeal against the part of the judgment granting the injunction, though precluded by sect. 120 of the County Court Act from appealing without leave against the damages.—*Brune v. James*, L.R. [1898] 1 Q.B. 417; 77 L.T. 802.
- (v.) **Q. B. D.**—*Practice—Sufficiency of Stamp—County Court Act, 1888 (51 & 52 Vict., c. 48), s. 164.*—O. xxxix., r. 8, of the Supreme Court applies by virtue of sect. 164 of the County Court Act, 1868, to a ruling of a county court judge on the sufficiency of the stamp on a document.—*Mander v. Ridgway*, 78 L.T. 118.

**Criminal Law:—**

- (vi.) **Q. B. D.**—*Trespass—Damage—Malicious Injuries to Property Act, 1861 (24 & 25 Vict., c. 97), s. 52.*—A trespasser walked across a field in spite of warning and did damage to the grass to the value of 6d. *Held*, that he was liable to summary conviction under sect. 52 of the Malicious Injuries to Property Act, 1861.—*Gayford v. Chouler*, L.R. [1898] 1 Q.B. 316; 78 L.T. 42.
- (vii.) **O. C. R.**—*Practice—Indictment—Proof of Age.*—In one indictment there may be counts charging individual prisoners separately and counts charging all the prisoners jointly. The Court has power to order the prisoners to be tried separately. The age of a person may be proved by any lawful evidence.—*Reg. v. Cox*, L.R. [1898] 1 Q.B. 179; 77 L.T. 584.
- (viii.) **O. C. R.**—*Indictment—Rape—48 & 49 Vict., c. 69, ss. 5 & 9.*—A prosecution for rape is a prosecution for any of the offences of which a person charged in an indictment for rape may be found guilty, and therefore a person so charged may be convicted for an offence under sub-sect. 1, sect. 5, of the Criminal Law Amendment Act, 1855, if prosecuted within three months of the offence.—*Reg. v. West*, L.R. [1898] 1 Q.B. 174; 77 L.T. 536.

- (i.) **C. C. R.—Evidence—Confession—Duty of Prosecuting Counsel and Solicitor—Bail.**—A confession is not admissible evidence where it is made in consequence of inducements held out by a person in authority, or after the accused was told that it would be better for him to speak the truth. Prosecuting counsel and solicitors having charge of prosecutions should satisfy themselves before putting confession in evidence that the confession was not made under circumstances to render it inadmissible. Bail is not to be withheld as a punishment.—*Reg. v. Ross*, 78 L.T. 119.

**Custom:—**

- (ii.) **C. D.—Tenant for Life of Manors—Leases for Lives—Fines—Income.**—Under a will a tenant for life of manors, without impeachment of waste, had power to grant leases for 21 years. According to the custom, he granted leases for lives to copyholders on nominal rents with fines. *Held*, that he was entitled to the fines as income.—*In re Meadows*; *Norie v. Bennett*, L.R. [1898] 1 Ch. 300; 78 L.T. 18.
- (iii.) **C. D.—Common Bull—Tithes—Inclosure Act (Haddenham Parish), 1830** (11 Geo. IV., c. 4), ss. 37 & 38.—There was a custom that a parson of a parish, as owner of the great tithes, should keep a bull and a boar for common use of the parishioners. Lands were allotted under an Inclosure Act in satisfaction and discharge of the great tithes. *Held*, that the burden of the custom was not shifted to the owners of the lands in the absence of express words in the Act.—*Lanchbury v. Bode*, 78 L.T. 14.

**Damages, Measure of:—**

- (iv.) **Q. B. D.—Breach of Warranty—Difference in Value—Sale of Goods Act, 1893** (56 & 57 Vict., c. 71), s. 53, sub-s. 2, 3.—The plaintiff bought at an auction for £21 an orchid described as the only known plant of that species. It turned out to be an ordinary plant, worth about 7s. 6d., and in an action in the county court for breach of warranty, the defendants paid in £21, which the judge held to be sufficient. *Held* (per Day, J.), that the county court judge was wrong, and that the plaintiff would be entitled, in addition, to interest on his money and his expenses in rearing the plant, and (per Lawrence, J.), that he would be entitled to the difference between the actual value of the plant and what it would have been worth if it had been as warranted.—*Ashworth v. Wells*, 77 L.T. 691.

**Deed:—**

- (v.) **C. A.—Construction—Estate Clause—Recitals—Omission of Mortgage—Estoppel.**—General words, whether descriptive of parcels or found in the estate clause, may be controlled or modified by other parts of the instrument and by the scope of the deed read as a whole, and for this purpose negative words are not requisite. By a settlement on the marriage of M. T., C., who had the fee (subject to two mortgages to A.), and of T., who had a life estate, conveyed, "according to their respective estates and interests," the fee and "all the estate, &c., of C. and T. respectively in or to arise out of the said premises" to trustees to the use of C., T., and M. T. for successive life estates with remainders over. At the date of the settlement (though no reference was made to it in the deed), T. was entitled to a mortgage created by C. T. afterwards voluntarily transferred this to M. T., who charged it in favour of the plaintiffs, who had no notice of the settlement. On the death of C. and of T., a declaration was sought, that this mortgage was a charge on the land, subject only to the mortgages to A. *Held*, that on the construction of the settlement, this mortgage did not pass, but had priority over the interests of all persons under the settlement, and that no estoppel was created by the representations made by T. in the recitals or by his standing by.—*Williams v. Pinckney*, 77 L.T. 700.

**Employer and Workman :—**

- (i.) **Q. B. D.**—*Defect in Ship Chartered—Injury to Charterers' Workmen—Employers Liability Act, 1880 (43 & 44 Vict., c. 42), s. 1 (1), 2, 3.*—Contractors chartered a ship to bring coal to a wharf, and, in consideration of themselves doing the unloading, received a beneficial allowance from the shipowner. Owing to defective ventilation, gas had accumulated in the vessel, and through the negligence of the contractors' agent, an explosion took place, which injured one of the men engaged by the contractors. *Held*, that the ship must be considered as part of the "plant" of the contractors, and that the fact that she had no ventilators was known to their agent.—*Carter v. Stephenson Clark & Co.*, 78 L.T. 76.

**Education Acts :—**

- (ii.) **Q. B. D.**—*School Board—Superannuation Fund—Elementary Education Act, 1870 (33 & 34 Vict., c. 75), s. 35.*—A school board can under sect. 35 of the Act of 1870 establish and manage a superannuation fund contributed to by officers and teachers out of their salaries.—*Phillips v. The School Board for London; Cockerton v. The School Board for London*, L.R. [1898] 1 Q.B. 4.

**Factory :—**

- (iii.) **Q. B. D.**—*Bleaching and Dyeing Works—"Hooking, Packing, and Lapping"—Factory and Workshop Act, 1878 (41 Vict., c. 16), s. 93—Fourth Schedule, Part 1, s. 2.*—Premises in which "hooking, lapping, making-up, and packing cloth" are carried on come within "bleaching and dyeing works" as defined by the Factory and Workshop Act, 1878.—*Rogers v. Manchester Central Packing Company*, L.R. [1898] 1 Q.B. 344; 78 L.T. 17.

**Fishery Acts :—**

- (iv.) **Q. B. D.**—*Salmon—Illegal Net—Salmon Fishery Acts, 1861 (24 & 25 Vict., c. 109), s. 8; 1873 (36 & 37 Vict., c. 71), s. 18.*—The possession of a net illegal as to its mesh, with the intention of catching salmon with it, is not an offence under the Salmon Fishery Acts as such a net is not a "like instrument" to a snare.—*Jones and Parry v. Davies*, L.R. [1898] 1 Q.B. 405; 78 L.T. 44.

**Franchise :—**

- (v.) **C. A.**—*Customary Tolls—Franchise Extinguished by Statutory Powers.*—A local Act reciting that a corporation had a customary right to receive tolls enacted that the right should remain vested in them for passage over a bridge, and made a variation in the powers. This Act was repealed by a second one, limited to a certain number of years, which authorised another scale of tolls. *Held*, that the statutory right extinguished the ancient right, and the right to tolls ceased altogether on the expiry of the second Act.—*Taylor v. Corporation of New Windsor*, L.R. [1898] 1 Q.B. 186; 77 L.T. 585.

**Friendly Society :—**

- (vi.) **Q. B.**—*Nomination by Member—Revocation by Will—Friendly Societies Act, 1875 (38 & 39 Vict., c. 60), s. 15, sub-s. 3.*—A nomination made under sect. 15 of the Act may be revoked by a subsequent will not communicated to the society during the life of the nominating testator.—*Bennett v. Slater and Another*, L.R. [1898] 1 Q.B. 469.

**Highways :—**

- (vii.) **C. D.**—*Roadside Slips.*—The public right of way over a road extends *prima facie* from fence to fence.—*Locke King v. Woking Urban District Council*, 77 L.T. 700.
- (viii.) **Q. B. D.**—*Timber Trees Causing Obstruction—Highway Act, 1835 (5 & 6 Wm. IV., c. 50), ss. 65, 66.*—The Court affirmed an order of

magistrates under sect. 65 of the Highway Act, 1835, for the removal of a yew tree growing on private land and causing an obstruction to a highway, and held that sect. 66, which says that an owner shall not be required to remove a tree growing in a hedge unless the highway is to be enlarged, has no application to a case of obstruction.—*Bullen v. Wakeley*, 77 L.T. 689.

- (i.) **Q. B. D.**—*Extraordinary Traffic—Person Liable—Highways and Locomotives (Amendment) Act, 1878* (41 & 42 Vict., c. 77), s. 23.—Builders of a county asylum entered into a contract for the haulage of plant by horse or traction engine, but no route was specified. The highway was damaged by the extraordinary traffic. *Held*, that the builders were not the persons by whose order the traffic had been conducted within sect. 23 of the Act.—*Pethick Bros. v. Dorset County Council*, 77 L.T. 688.
- (ii.) **Q. B. D.**—*Old public footway—Private Street Works Act, 1892* (55 & 56 Vict., c. 57), ss. 2, 3, 5, 6.—A street formed upwards of 70 years ago had always been open at both ends into old highways, and used without interruption as a public footpath, though no repairs had been done to it beyond clearing away refuse. *Held*, that the *onus probandi* is upon the authority to shew that a street is a street within the Private Street Works Act, and that this was not such a street, being a footway repairable by the inhabitants at large.—*Rishton v. The Mayor of Haslingden*, L.R. [1898] 1 Q.B. 294; 77 L.T. 620.

#### Highway Surveyor:—

- (iii.) **Q. B. D.**—*Member of District Council supplying team for work on Highways—Highway Act, 1835*, s. 46—*Public Health Act, 1875* (38 & 39 Vict., c. 55), s. 144—*Local Government Act, 1894* (56 & 57 Vict., c. 78), ss. 25, 46.—By the Highway Act, 1835, sect. 46, a parish surveyor may contract for carrying materials for repair of a highway, but may not have an interest in the contract without the licence of two justices. By the Public Health Act, 1875, sect. 144, urban authorities have the powers of parish surveyors, and by the Local Government Act, 1894, sect. 25, rural district councils have the powers as to highways of urban authorities. A person let a team of horses to be used for repairing a highway within the district of a council of which he was a member, and he had no licence from justices. *Held*, that the magistrates were right in dismissing a summons against him for penalties under the Highways Act of 1835.—*Buckley v. Hanson*, 77 L.T. 666.

#### Husband and Wife:—

- (iv.) **P. D.**—*Divorce—Desertion*.—Where more than two years before a wife's petition for dissolution, a husband who had committed adultery absconded to avoid a criminal charge, the Court on the authority of *Drew v. Drew* L.R. [1888] 13 P.D. 97, found him guilty of desertion.—*Wynne v. Wynne*, L.R. [1898] P. 18.
- (v.) **P. D.**—*Divorce—Permanent Maintenance—Dum sola without dum casta Clause*.—The respondent husband's income from investments was £972 a year, and he had a reversionary interest of the present value of £5,888. There was one child of the marriage, and the petitioner, it was suggested, was about to marry a gentleman of some means. The Court ordered a permanent maintenance secured, of £350, to be increased by £50 on the falling in of the reversion, with an additional £100 a year unsecured, to be paid to the petitioner for the child. The *dum sola* clause was ordered to be inserted with respect to the additional £50 only.—*Smith (Florence) v. Smith (William)*, L.R. [1898] P. 29; 78 L.T. 28.
- (vi.) **P. D.**—*Divorce—Permanent Maintenance—Dum casta et sola vixerit*.—Questions of permanent maintenance are decided on the circumstances of the particular case. The practice is to order the allowance for the petitioner's life. When the allowance is large and the petitioner has

a substantial separate income the *dum sola* clause should be inserted, and when the lady's reputation has not been spotless the *dum casta* clause also.—*Kettlewell v. Kettlewell*, 77 L.T. 681.

- (i.) **P. D.**—*Judicial Separation—Habitual Drunkenness—Charges of Misconduct—Admissibility of Evidence.*—A woman who marries, with knowledge, a drunkard, is not held to have taken the risk of all results of his drunken habits. Where a wife, in a petition for judicial separation, alleges that her husband charged her falsely in the presence of other persons with ante-marital misconduct, proof of the alleged misconduct is not admissible unless the husband is called to state that he believed and acted on the reports which he received.—*Walker v. Walker*, 77 L.T. 715.
- (ii.) **P. D.**—*Divorce—Wife's Costs where no Real Defence.*—The costs of a wife who is respondent will not be allowed where her solicitors had knowledge of her guilt, but they may be taxed against the correspondent.—*Townson v. Townson and Bucknall*, 78 L.T. 54.

### Jurisdiction:—

- (iii.) **C. D.**—*Foreign State Plaintiff—Defence.*—A foreign sovereign or state suing in this country submits to the jurisdiction so far only as the subject matter of the action is concerned, and the powers of the Court to relieve the defendant are limited to allowing discovery and a counterclaim in mitigation of the demand (*see* 23, p. 47 (i.)).—*South African Republic v. La Compagnie Franco Belge du Chemin de Fer, &c.*, L.R. [1898] 1 Ch. 190; 77 L.T. 555.

### Landlord and Tenant:—

- (iv.) **C. D.**—*Demise—Part of House with Right to Outer Walls—Advertising Boards—Derogation from Grant.*—Where a part of a building was let with the right to use the outer walls for advertising, it was held that the landlord could not put up a sign of his own on the walls included in the letting.—*Carlisle Café Co. and Todd v. Muse Bros. & Co.*, 77 L.T. 515.
- (v.) **Q. B.**—*Agreement to pay all Outgoings—A New Tax.*—A yearly tenant had agreed to pay all outgoings. A new rate was made of which it was an incident that it could be deducted from rent unless there was an agreement to the contrary. *Held*, that a general agreement was not an agreement to the contrary; but that the tax could only be deducted from rent of the corresponding year and therefore a tax paid in past years and not deducted could not be recovered from the landlord.—*Mile End Old Town Vestry v. Whitby*, 78 L.T. 80.
- (vi.) **Q. B. D.**—*Lease—Mesne Assignments—Who should Give Notice under Proviso to Determine.*—A lease contained a proviso that it could be determined by the lessee, his executors, administrators, or assigns giving six months' notice before the expiration of 14 years. The original lessee assigned, taking a covenant of indemnity, to the third party who assigned, with a similar covenant, to another person who disappeared after depositing the lease with bankers as a security. The third party purchased the bankers' rights, took possession, and after paying rent to the lessor who was acquainted with the circumstances, gave in conjunction with the original lessee, notice to terminate at the end of the 14 years. *Held*, that the notice should have been given by (or at all events on behalf of) the assignee who had disappeared in whom the term was vested, and that consequently the lease was still subsisting.—*Seaward v. Drew; Farmer, third party*, 78 L.T. 19.
- (vii.) **C. A.**—*Tenancy for One Year Certain—Notice to Quit at any Time.*—Premises were let for one year certain from the date of the agreement, and so on from year to year unless the tenancy should be determined by 28 days' written notice from either party, such notice to expire at any period of the year without reference to the time of entry, the

date of the agreement, or the commencement of the tenancy. *Held*, that the tenancy could not be determined during the first year.—*The Cannon Brewery v. Nash*, 77 L.T. 648.

- (i.) **C. A.**—*Breach of Covenant—Notice—Expiry—Subsequent Claim for Rent—Second Notice?—Forfeiture.*—Where, in an ejectment action, a lessor has claimed rent to a date subsequent to that of the expiry of a notice of breach of covenant to repair, served under sect. 14 (1) of the Conveyancing Act, 1881, he can, if the breach continues beyond the date up to which he has claimed rent, enforce a right of re-entry under a proviso in the lease, without issuing a second notice.—*Penyon v. Barnett*, L.R. [1898] 1 Q.B. 276; 77 L.T. 645.

### Letters:—

- (ii.) **C. D.**—*Property in Letters—Rights of Publication.*—The property in the subject matter of a letter is in the writer; and the publication of the letter against his will, unless it be by the receiver in vindication of his own character, will be restrained. But the possessor will not be restrained from informing anyone of the contents of the letter.—*Labouchere v. Hess*, 77 L.T. 559.

### Licensing:—

- (iii.) **Q. B. D.**—*Decease of Tenant—Transfer of Licence—Alehouse Act, 1828* (9 Geo. IV., c. 61), s. 14.—On the death intestate, of an innkeeper, the licence was handed to the appellant for a consideration, but petty and quarter sessions refused to transfer the licence for the remainder of the then current year on the ground that the case did not fall within sect. 14 of the Act of Geo. IV. *Held*, that the case came within the Act and that quarter sessions had jurisdiction.—*Davies v. Evans*, 77 L.T. 688.
- (iv.) **C. A.**—*Off-Licence—Order Sanctioning Removal—New Licence—Licensing Act, 1872* (35 & 36 Vict., c. 94), s. 50.—Decision of Divisional Court (23, 9, iii.) affirmed.—*Reg. v. Thornton and Others; c. p. Lacon & Co., Limited*, L.R. [1898] 1 Q.B. 334; 78 L.T. 95.
- (v.) **Q. B. D.**—*Licensed Premises Demolished for Public Purposes—New Premises—Transfer of Licence—Intoxicating Liquor Licensing Act, 1828*, s. 14.—When an inn is pulled down for public purposes, the person who at the time held the licence and carried on the business is the only one entitled to apply for a transfer of the licence to new premises.—*Reg. v. Justices of West Riding of Yorkshire; c. p. Shaw*, 78 L.T. 47.

### Local Government:—

- (vi.) **C. A.**—*Notice to provide sufficient Closet Accommodation under Public Health Act, 1875* (38 & 39 Vict., c. 55), s. 86.—The Public Health Act, 1875, enables a local authority to require the owner or occupier of a house "to provide a sufficient water closet." In accordance with a general resolution of a local authority a notice was served on an owner to provide a closet "on the waste water closet system." *Held*, that the notice was invalid as being made under a general resolution and as not permitting the owner to provide any other "sufficient" closet.—*Wood v. Widnes Corporation*, L.R. [1898] 1 Q.B. 463; 77 L.T. 779.
- (vii.) **C. A.**—*Paving—Liability of Frontagers—Ashton-under-Lyne Improvement Act, 1849* (12 & 13 Vict., c. 35)—*Public Health Act, 1875*, ss. 149, 340, 341.—A local Act of 1849 gave to a corporation the right to charge the expense of paving a street to the frontagers. The Public Health Act, 1875, sect. 149, requires the urban authority to pave streets which at any time become repairable by the inhabitants at large. *Held*, that this Act did not repeal the local Act, and that the corporation could recover from a frontager.—*Ashton-under-Lyne Corporation v. Pugh*, L.R. [1898] 1 Q.B. 45; 77 L.T. 583.

**Lunacy:—**

- (i.) **C. A.**—*Lunatic Resident out of Jurisdiction—Curator—Transfer of Stock*—*Lunacy Act, 1890* (53 Vict., c. 5), s. 184.—A curator appointed according to the laws of a place out of the jurisdiction, where a lunatic is resident is not of right entitled to have stock in this country transferred into his name out of the lunatic's. The Court will in its discretion decide whether such an order should be made.—*In re A. M. Knight*, L.R. [1898] 1 Ch. 257; 77 L.T. 773.

**Mandamus:—**

- (ii.) **Q. B. D.**—*Refusal of Access to Minutes of Burial Board—Burial Act, 1852* (15 & 16 Vict., c. 85), ss. 16, 17.—A ratepayer made application under sect. 16 for his solicitor to inspect and copy minutes of a burial board. The board refused on the ground that only the ratepayer personally was entitled, and that the solicitor was acting for a company, to whom in another matter it was an object to obtain inspection of the minutes. The Court refused to issue a writ of mandamus, as the application was not in a legal sense *bonâ fide*.—*Reg. v. Wimbledon Urban District Council*; *e. p. Hatton*, 77 L.T. 599.

**Married Woman:—**

- (iii.) **C. A.**—*Restraint on Anticipation*.—A married woman cannot by any device deprive herself of the protection of a restraint on anticipation. The restraint can only be got rid of under sect. 39 of the Conveyancing Act, 1881. Decision of Court below (23, p. 10, iv.) affirmed.—*Bateman v. Faber*, L.R. [1898] 1 Ch. 144; 77 L.T. 576.
- (iv.) **C. D.**—*Protection Order—Contract Entered into Prior to Married Woman's Property Act, 1882* (45 & 46 Vict., c. 75)—*Rights of Creditor—Matrimonial Causes Act, 1857* (20 & 21 Vict., c. 85), ss. 21, 26.—A married woman who had obtained a protection order under sect. 21 of the Act of 1857 covenanted by deed in 1880 to pay money. In 1894 she acquired and exercised testamentary powers of appointment over funds. On her death it was held that she was entitled under sects. 21 and 26 of the Act of 1857 to enter into contracts; that having exercised a general power of appointment she had made the fund liable for the debts, and that the covenantor could prove as a creditor.—*In re Hughes*; *Brandon v. Hughes*, 77 L.T. 564.
- (v.) **C. D.**—*Payment of Husband's Debts out of Separate Estate—Restraint on Anticipation—Indemnity—Conveyancing Act, 1881* (44 & 45 Vict., c. 41), s. 39.—A wife who has contributed out of her separate estate towards payment of her husband's debts has an equitable right of indemnity against him during his life and against his estate after his death. But where the contribution has been made by order of the Court under sect. 39 of the Conveyancing Act, 1881, by relief of restraint on anticipation, the husband is not liable.—*Paget v. Paget*, L.R. [1898] 1 Ch. 47.

**Master and Servant:—**

- (vi.) **H. L.**—*In Lawful Act Motive Immaterial—Procuring Discharge or Preventing Employment of Servant*.—The motive with which an act not illegal in itself is done is immaterial. To induce, even maliciously, an employer to dismiss a servant, or not to engage a particular person, gives no right of action, in the absence of breach of contract, to the person injured. (The Lord Chancellor and Lords Ashbourne and Morris dissenting). See 20, p. 111, vii. *Keeble v. Hickeringill* (11 East 574 n.), and *Lumley v. Gye* (2 E. & B. 216), discussed. *Temperton v. Russell* (69 L.T. Rep. 74; L.R. 1 Q.B. 715), disapproved.—*Allen v. Flood*, L.R. [1898] A.C. 1; 77 L.T. 717.
- (vii.) **Q. B. D.**—*Domestic Servant—Fortnight's Notice to Leave at End of First Month*.—A custom by which a master or a domestic servant can give to the other a fortnight's notice of the intention to terminate a

contract of service at the end of the first month is not one judicially noticed, and must be proved. It being thus a question of fact there is no appeal from a decision upon it in a county court.—*Moult v. Halliday*, L.R. [1898] 1 Q.B. 125; 77 L.T. 794.

**Metropolis :—**

- (i.) **H. L.**—*Sewer*—*Metropolis Management Acts*, 1855 (18 & 19 Vict., c. 120), ss. 68, 69, 74, 250; and 1862 (25 & 26 Vict., c. 102), s. 47.—The owner of a row of houses drained them after the passing of the Metropolis Management Acts by a pipe running into the vestry's sewer. *Held* (affirming the decision of the Court of Appeal), that the pipe was a "sewer" within the meaning of sect. 250 of the Act of 1855.—*Vestry of St. Matthew, Bethnal Green v. London School Board*, L.R. [1898] A.C. 190; 77 L.T. 635.
- (ii.) **Q. B. D.**—"Dwelling-house"—"To be Inhabited"—"Adapted to be Inhabited by Persons of the Working Class"—*London Building Act*, 1894 (57 & 58 Vict., c. 213), ss. 5 (25), (26), (27) and 13 (5).—By sect. 13 of the Building Act, "no dwelling-house to be inhabited or adapted to be inhabited by persons of the working class" is to exceed a certain height. *Held*, that though a public building within sect. 5 (27) may be a "dwelling-house" within sect. 13 (5), a public building to be used as an hotel for poor men is not; that "to be inhabited" means intended when built to be inhabited; that "adapted to be inhabited" means structurally adapted; and that "working class" means a class amongst whom over-crowding is likely to take place.—*London County Council v. Davis*; *London County Council v. Roulton House Co.*, 77 L.T. 698.

**Mortgage :—**

- (iii.) **C. D.**—*Contributory Mortgages by Trustee and Solicitor*—*Breach of Trust*—*Priorities*.—Prance and W. took a transfer, stated to be on joint account and interest, of a mortgage for £3,000 at 4½ per cent. on a property which was an inadequate security. By a memorandum, they admitted that the consideration money was not their own, but was made up of £3,000 belonging to a firm of solicitors of which Prance was a member, and £3,000 belonging to the A. trustees for whom his firm acted, and that they were trustees for this latter sum at 4 per cent. A day or two afterwards, the firm of solicitors transferred their £3,000 to bear interest at 4 per cent. to the B. trustees for whom they acted also; and to both sets of trustees they guaranteed the payment of interest and the repayment of principal in consideration of receiving the difference between the 4½ and the 4 per cent. Some years later, they paid off a part of the sum due to the B. trustees, and a deed, executed at the same time between themselves, Prance and W., and the B. trustees, declared that Prance and W. stood seised of the property as to the two sums of £3,000 for the parties interested *pari passu*. The firm of solicitors became bankrupt, and the A. trustees claimed priority over the B. trustees and over the trustee in bankruptcy. *Held*, that there had been a breach of trust in advancing the money in excess of the ratio allowed by law, and in not taking the security in the names of trustees; that the solicitors had been guilty of a breach of duty in not so advising their clients, for which they were answerable in the bankruptcy; that they were not precluded from taking the benefit of the difference of interest to the disadvantage of the A. trustees; and that the plaintiff was not entitled to priority.—*Stokes v. Prance*, L.R. [1898] 1 Ch. 212; 77 L.T. 595.
- (iv.) **C. A.**—*Meaning of "Punctually."*—A mortgage deed contained the proviso that the principal should not be required until the expiration of three years "if in the meantime every half-yearly payment of interest shall be punctually paid." Payment not having been made at the close of a half-year, the mortgagees, four days afterwards, gave



notice requiring payment of principal. *Held*, that "punctually" means on the day named, and that the mortgagees were within their right in demanding payment. Decision of Court below reversed.—*The Leeds and Hanley Theatre of Varieties, Limited, v. Broadbent*, 77 L.T. 665.

- (i.) **C. A.**—*Claim of Mortgagee to Fund on giving Receipt—Right to Pay into Court—Conveyancing Act, 1881* (44 & 45 Vict., c. 41), s. 22, sub-s. 1.—Trustees of a fund in mortgage on which they have reason to expect that adverse claims will be made are not bound to hand over the fund in exchange for the receipt of the mortgagee under sect. 22 (1) of the Conveyancing Act, 1881, but may protect themselves by paying the money into Court. *In re Bell; Jeffery v. Sayles* (21, p. 42, iv.) applied.—*Hockey v. Western*, 78 L.T. 1.

### Parliament :—

- (ii.) **Q. B. D.**—*Election Expenses—Return—Action for Penalties—Corrupt and illegal Practices Prevention Act, 1883* (46 & 47 Vict., c. 51), s. 38.—A candidate for a seat in Parliament had, under sect. 24, sub-sect. 2, of the Corrupt Practices Act, 1883, named himself as his own election agent. As such he posted on the 35th day the returns, but imperfect in some particulars required by sect. 38. Those in course of post would not be due to reach their destination till the 37th day after his election, and before that day he voted in the House of Commons. *Held*, that an erroneous return is not a "failure to transmit," but that the transmission required by sub-sect. 5 is completed transmission, and that therefore the defendant was liable for voting before the delivery of the returns to the fine of £100 named in the sub-section.—*Mackinnon v. Clark*, 77 L.T. 657.
- (iii.) **Q. B. D.**—*Parliamentary Franchise—Representation of the People Acts, 1832* (2 & 3 Wm. IV., c. 45), ss. 27 & 29; 1867 (30 & 31 Vict., c. 102), ss. 3, 6, 27; 1884 (48 & 49 Vict., c. 3), ss. 2, 5.—A claim to the Parliamentary franchise for a "dwelling house joint" is bad (sect. 3 of Act of 1867) as a household qualification, but will enable the claimant to shew that he is entitled to the £10 occupation franchise.—*Bagley v. Butcher and Another*, L.R. [1898] 1 Q.B. 67; 77 L.T. 525.

### Partition :—

- (iv.) **C. A.**—*Partition Action—Tenant of Undivided Moiety Sole Defendant—Sale—Partition Act, 1868* (31 & 32 Vict., c. 40), ss. 4 and 9.—Sale may be ordered in lieu of partition where the plaintiff has an undivided moiety of the property and the defendant holds a lease granted by the owner of the other moiety, who has declared that he has "no interest in the hereditaments mentioned in the statement of claim."—*Mason v. Keays*, 78 L.T. 33.

### Partnership :—

- (v.) **C. D.**—*Dissolution—Purchase by Partner who retained "Assets"—Vendor canvassing Old Customers—Injunction.*—In compromise of an action for dissolution of partnership the assets were retained by one of two partners in consideration of a payment by the other. *Held*, under *Trego v. Hunt*, that where goodwill was assigned between parties in the relationship of vendor and purchaser the vendor could be restrained from canvassing old customers, and must observe the general obligations of a vendor. *Gray v. Smith* (61 L.T. Rep. 481), and *Pearson v. Pearson* (51 L.T. Rep. 311) considered.—*Jennings v. Jennings*, 77 L.T. 786.

### Patent :—

- (vi.) **H. L.**—*Infringement—Foreign Manufacturer—Patented Article Purchased Abroad and sent by Post to England.*—A foreign manufacturer sent through a foreign post office to a firm in England by their

request goods made abroad under a patent protected in England. *Held*, that the contract was completed by delivery abroad; that the post office was the agent of the buyer, and that there was no right of action in the patentee against the vendor for infringement. Judgment of Court of Appeal (23, 11, iv.) affirmed.—*The Badische Anilin und Soda Fabrik v. The Basle Chemical Works Bindschedler*, L.R. [1898] A.C. 200; 77 L.T. 573.

- (i.) **C. A.**—*Design*—“*Pattern*”—*Originality*—*Patents, &c., Act*, 1883 (46 & 47 Vict., c. 57), ss. 47, 51, 60—*Design Rules*, 1890, r. 9.—Application was made to have a design removed from the register on the ground that it was not new or original; that the drawing annexed to the certificate of registration was insufficient; and that sect. 51 of the Act was not complied with. On the facts it was held that treating the word “pattern” as including shape, ornamentation, and outline according to *Le May v. Welch* (51 L.T. Rep. 867; L.R. 28 Ch. Div. 24), and *In re Clarke's Design* (22, 10, viii.) there was enough originality to entitle the design to be kept on the register, and that a slight mistake in the drawing having been rectified as soon as it was discovered was within the saving clause of sect. 51. —*In re Rollason's Registered Design*, L.R. [1898] 1 Ch. 237; 77 L.T. 605.

#### Poor Law:—

- (ii.) **C. A.**—*Settlement*—*Order of Removal*—*Sub-division of Parish under Local Government Act*, 1894 (56 & 57 Vict., c. 78), s. 1, sub-s. 8.—A birth settlement in a parish is lost if the parish is divided under sect. 1 of the Local Government Act, 1894. Decision of Divisional Court (23, 46, v.) affirmed. —*Guardians of the Poor of St. Saviour's v. Dorking Union*, 78 L.T. 29.

#### Powers:—

- (iii.) **C. A.**—*Power of Appointment by Deed or Will*—*Double Portion*.—Decision of the Chancery Division (23, p. 15, i.) reversed, the Court of Appeal being of opinion on the facts (without expressing any view on the question of double portions) that the case was analogous to that of a testator giving in his lifetime to a legatee under his will the amount of his legacy.—*In re Ashton; Ingram v. Papillon*, L.R. [1898] 1 Ch. 142; 77 L.T. 582.

#### Practice:—

- (iv.) **C. D.**—*Lancaster Palatine Court*—*Service of Order out of Jurisdiction*—*Court of Chancery of Lancaster Acts*, 1850 (13 & 14 Vict., c. 43), s. 15; 1854 (17 & 18 Vict., c. 82), s. 7.—Where an order of the Palatine Court cannot be enforced against a person because of his residence out of the jurisdiction, application should be made to the Chancery Division to have the order made an order of the High Court under sect. 15 of the Act of 1850, notwithstanding sect. 7 of the Act of 1854.—*In re Dunmore v. Warham*, 78 L.T. 88.
- (v.) **C. D.**—*Writ*—*Service of Notice out of Jurisdiction*—*Rules of 1883*—O. xi., r. 1 (e) (g).—A London firm deposited as security life policies with a German bank and afterwards created a second charge on the policies in favour of a person living in Germany. The bank afterwards acquired the equity of redemption and transferred it to trustees for themselves in England, against whom they commenced an action for foreclosure. On motion to discharge an order for notice, in lieu of service, of writ on the person holding the second charge, it was held, that the case did not come under O. xi., r. 1 (e), as it was not founded on breach of contract; that the trustees should have been joined as co-plaintiffs, not defendants, as there was no actual relief claimed against them; and that the order must be discharged.—*Deutsche National Bank v. Paul*, L.R. [1898] 1 Ch. 283; 78 L.T. 85.

- (i.) **C. D.**—*Striking Out Statement of Claim*—O. xxv., r. 4.—*Form of Tender*.—A liquidator wrote to proposing purchasers of a mine "the highest net money tender I receive, other things being equal and satisfactory, I will at once accept." A person made a money tender, accompanied by an offer to indemnify the vendor against all claims under, and to take an assignment of, another property. The plaintiffs tendered offering £200 over the unknown amount of the other tender, coupled with an offer to take the lease of the other property if the rival offer was on that footing. The liquidator refused to recognise the plaintiffs' tender and accepted the other. On a claim for specific performance, the defendant moved to strike out the statement of claim as disclosing no reasonable cause of action. *Held*, that the terms of taking over the lease of the second property were so much more favourable to the defendants in the accepted tender than on the plaintiffs' offer that other things were not equal within the terms of the liquidator's letter; that there was no contract between the plaintiffs and the liquidator, and that the statement of claim must be struck out.—*The South Hetton Coal Co., Limited, v. The Haswell, &c., Coal Co., Limited*, 78 L.T. 8.
- (ii.) **C. A.**—*Joinder of Causes of Action*—O. xvi., rr. 4 & 5; O. xviii., r. 1.—A plaintiff cannot join in an action against several defendants for joint tort a claim against some of the same defendants for another tort, although both claims may have arisen out of the same occurrence. *Sadler v. Great Western Railway* (74 L.T. Rep. 561; L.R. [1896] A.C. 450) followed.—*Gower v. Coultridge and Others*, L.R. [1898] 1 Q.B. 348; 77 L.T. 701.
- (iii.) **P. D.**—*Probate—Conduct Money—Court of Probate Act, 1857, s. 26.*—*Semble*, that conduct money cannot be claimed in the first instance by a person directed to attend for examination pursuant to sect. 26 of Act.—*In the goods of Wyatt*, L.R. [1898] P. 15; 78 L.T. 80.
- (iv.) **C. D.**—*Company—Winding-Up—Notice of Filing Affidavits*.—Notice of filing supplemental affidavits in support of a winding-up should be given in order to avoid unnecessary adjournments. *In re New Weighing Machine Company explained.*—*In re British Cycle Manufacturing Company, Limited*, 77 L.T. 683.
- (v.) **H. L.**—*New Trial*.—Where a jury have answered reasonably a question of fact left to them their verdict cannot be disturbed, but if their attention has not been directed to the whole facts or if the question to be determined was not so left to them that their verdict was given on the whole facts, the Court may order a new trial. Judgment of Court of Appeal reversed.—*Jones v. Spencer*, 77 L.T. 536.
- (vi.) **C. A.**—*Tender of Cheque*.—Plaintiffs appealed against a decision of the Chancery Division (22, p. 66, vi.). They had obtained an *ex parte* order to restrain a sale of mortgaged property on condition that they paid a sum of £400 into Court. They failed to fulfil the condition, but on the morning of the sale their solicitor tendered to the defendants' solicitor £400 in cash, and under protest his own cheque for further charges incurred. The tender was refused on the ground that it was under protest. *Held*, without review of the decision of the point of law (22, p. 66 vi.) that the appeal must be dismissed on the facts of the case.—*Blumberg v. The Life Interests and Reversionary Securities Corporation, Limited*, L.R. [1898] 1 Ch. 27; 77 L.T. 506.
- (vii.) **C. A.**—*Security for Costs—Limited Company, Plaintiff—Companies Act, 1862 (25 & 26 Vict., c. 89), s. 69.*—By sect. 69 where a limited company with insufficient assets is plaintiff in any legal proceeding it may be required to give security for costs. The amount of the security is to be measured by the probable costs which the defendant will be put to.—*The Dominion Brewery, Limited, v. Foster*, 77 L.T. 507.

- (i.) **C. D.**—*Lis Pendens Act, 1867* (30 & 31 Vict., c. 47), s. 2—*Order vacating Registration*.—Where an action which had been entered as a *lis pendens* was dismissed, an order was included in the judgment vacating the registration unless notice of appeal was set down within a fortnight.—*Baxter v. Middleton*, L.R. [1896] 1 Ch. 318.
- (ii.) **Q. B. D.**—*Shorthand Notes to supplement Judge's Notes*—O. lviii., r. 11.—On the hearing of an appeal any evidence on vital points which has been omitted from the judge's notes may be supplied from the shorthand writer's notes.—*In re Sprange*; *c. p. The Official Receiver*, 77 L.T. 898.
- (iii.) **P. D.**—*Dissolution of Marriage—Suits by Opposite Parties in England and Scotland—Order*.—Where a wife instituted proceedings for judicial separation, and the husband, whose place of domicile was Scotland, filed an act on petition disputing the jurisdiction, the Court restrained him from proceeding for a dissolution in Scotland until the act on petition should be heard, or until further orders.—*Christian v. Christian*, 78 L.T. 86.
- (iv.) **P. D.**—*Divorce—Motion for Leave to Proceed without a Co-respondent*.—Where, in proceedings for divorce, a wife had made admissions of adultery with a person about whom nothing could be ascertained, the Court on a motion for leave to proceed without a co-respondent, directed the petitioner's solicitor to seek an interview with the wife on the subject of the admission.—*Grose v. Grose*, 78 L.T. 89.

#### Principal and Agent:—

- (v.) **C. A.**—*Stock Exchange—Wrongful Sale by Broker—Claim by Broker for Indemnity*.—A stockbroker, who had bought stock for the defendants, took, by agreement with them, a portion of it off the market with his own money on the understanding that he should hold the portion as part security for the whole purchase, and should not part with it till the 26th November, till which time the balance of stock was carried over. But on the 19th November the broker, without communication with the defendant, sold at a loss the whole of the stock bought on their order. If it had been retained till the 26th it would have realised a higher figure. In an action by the broker for indemnity, *held* that with respect to the stock paid for and taken off the market he could recover as for money paid for the defendants at his request, subject to counter-claim for loss through the premature sale; but that no action was maintainable (Rigby, L.J., dissenting) in respect of the stock carried over, as the loss arose through the wrongful sale, not through any breach of contract by the defendant.—*Ellis v. Pond and the Bloomsbury Syndicate*, L.R. [1898] 1 Q.B. 426.
- (vi.) **Q. B.**—*Authority—Representation by Agent—Fraud—Liability of Principal*.—The plaintiffs employed a clerk of the defendants in a series of Stock Exchange transactions. The earlier ones were carried through by the defendants, who gave to their clerk a commission on the business he so brought, but the later transactions, through the fraud of the clerk, were not. On a claim by the plaintiff for specific performance the jury found that the clerk had no express authority from the defendants to enter into the contracts, but was held out as having such authority. On the case coming up for further consideration, it was *held* that there was no evidence that the clerk was held out as having authority to enter into contracts on behalf of the brokers so as to bind, and this was confirmed by the Court of Appeal.—*Sponner v. Browning, Todd, and Whish*, 77 L.T. 685; 78 L.T. 96.

#### Presumption of Death:—

- (vii.) **P. D.**—*Probate—Practice*.—An affidavit in support of an application for leave to presume death of a person should contain a statement of belief that he died on the stated date.—*In the goods of Harlston*, L.R. [1896] P. 27.

- (i.) **P. D.**—The Court presumed the death of a person who disappeared three years before.—*In the goods of James Matthews*, L.R. [1898] P. 17; 77 L.T. 630.
- (ii.) **P. D.**—*Brothers on Board Vessel—Presumed Loss—Leave to swear Death and no Presumption of Survivorship.*—Two brothers sailed in the same ship from New York in 1896, and nothing has been since heard of them or the ship, or any other person who sailed in it. The Court gave leave to swear that they died on or about a given date in 1896, and that there was no reason to presume that one died before the other.—*In the goods of F. W. Johnson*, 78 L.T. 85.

#### Public Health:—

- (iii.) **Q. B. D.**—*Smoke Nuisance—Sufficiency of Notice—Public Health Act, 1875 (38 & 39 Vict., c. 55), ss. 91, 94.*—Justices dismissed a summons against the respondent for permitting black smoke to escape from a chimney on the ground that the notice served on him did not, as required by sect. 94 of the Act, set out the works necessary to remedy the nuisance. *Held*, reversing the decision, that the notice was sufficient, as the requirement was, not that works should be done, but that the black smoke should be stopped.—*Millard v. Wastall*, L.R. [1898] 1 Q.B. 342; 77 L.T. 692.

#### Railway:—

- (iv.) **H. L.**—*Defective Truck belonging to another Company.*—Trucks of the Caledonian Co. loaded with coal were at the termination of the company's contract of carriage handed over to the G. Railway Co. by whom they were taken on a further journey, in course of which, owing to a defect in one of the trucks, a servant of the G. Co. was injured. *Held*, reversing the judgment of the Court of Session, that the Caledonian Co. were not liable. *Heaven v. Pender* (L.R. 11 Q.B. Div. 503; 49 L.T. Rep. 357), distinguished.—*Caledonian Railway Co. v. Warwick*, 77 L.T. 570.
- (v.) **H. L.**—*Level Crossing—Obligation to Build Bridge—Railway Clauses Consolidation Act, 1845 (8 & 9 Vict., c. 20), ss. 45, 61.*—Decision of Court of Appeal (22, p. 25, iii.) affirmed.—*Dartford Rural District Council v. Dextley Heath Railway Co.*, L.R. [1898] A.C. 210; 77 L.T. 601.
- (vi.) **C. A.**—*Obstructing Road—Penalty—Railway Clauses Consolidation Act, 1845, ss. 53 & 54.* *Hehl*, on the facts stated in 23, p. 16, v., that there is one penalty for each day that the road is interfered with, which can be recovered by the owner of any part of the road who first sues. Decision of Court below affirmed.—*Llewellyn v. Vale of Glamorgan Railway Co.*, 78 L.T. 70.

#### Rating:—

- (vii.) **Q. B. D.**—*Poor Rate—Exemption.*—By a local Act, land vested in trustees was to be exempt from poor and other rates, and was to be applied to specified purposes. By a later Act, the land was made liable to all rates imposed by the corporation. The land was used for other than the specified purposes, and a claim was made that on that ground the exemption from poor rate had failed, and that by the later Act the exemption was revoked by implication. *Held*, that the exemption was preserved, notwithstanding the unauthorised use of the land and that there was no implied revocation under the later Act.—*The Pontefract Assessment Committee v. Hartley and Others; The Same v. The Pontefract Park Trustees*, 77 L.T. 565.
- (viii.) **Q. B. D.**—*Exemption—6 & 7 Vict., c. 36, s. 1.*—The Royal College of Music was, on the terms of its charter, *held* to be exempt from parochial rates by virtue of sect. 1 of 6 & 7 Vict., c. 36. *Reg. v. Institute of Civil Engineers* (L.R. 5 Q.B.D. 48; 42 L.T. Rep. 145) and *Commissioners of Inland Revenue v. Forrest* (L.R. 15 App. Cas. 334;

62 L.T. Rep. 36) considered.—*Royal College of Music v. Parishers of St. Margaret and St. John, Westminster*, L.R. [1898] 1 Q.B. 304; 77 L.T. 627.

**Restraint of Trade :—**

- (i.) **Q. B. D.**—*Covenant—Neighbourhood*.—On the sale of a business and goodwill, the vendor covenanted "not to employ anyone or retail milk on his own account in the neighbourhood of Southampton or Norham." *Held*, that the terms of the covenant were not too wide to protect the purchaser. The word neighbourhood meant the immediate neighbourhood of the two places.—*Stride v. Martin*, 77 L.T. 600.

**Revenue :—**

- (ii.) **C. A.**—*Shares and Debentures—Foreign Holder—Transfer to Names of Executors without Probate*—55 Geo. III., c. 184, s. 87—*Executor de son tort—Customs and Inland Revenue Act, 1881* (44 & 45 Vict., c. 12), s. 40.—*Held*, on facts stated in 23, 17, iv., that the company had become an executor *de son tort* and liable to duty. Decision of Queen's Bench Division reversed.—*Attorney-General v. New York Breweries Co., Limited*, 78 L.T. 61; L.R. [1898] 1 Q.B. 205.
- (iii.) **Q. B. D.**—*Trust Deed for Securing Debentures—Substituted Security Stamp Act, 1891* (54 & 55 Vict., c. 89), s. 86, sub-s. 1; s. 88, sub-s. 1, Schedule 1.—A trust deed, securing £300,000 of debenture stock at 3½ per cent., recited a previous trust deed, securing £500,000 of debenture stock at 4 per cent., to replace which a further issue of £540,000 of debenture stock at 3½ per cent. was to be made. *Held*, that the deed was a security for £840,000 to be advanced within the meaning of sects. 86 and 88 of the Stamp Act, notwithstanding that something remained to be done before the issue could be completed; and that as to the £500,000, the deed was a substituted security, not a transfer of a mortgage, and liable therefore only to an *ad val.* duty of 6d. per cent.—*The City of London Brewery Co., Limited, v. Commissioners of Inland Revenue*, L.R. [1898] 1 Q.B. 408; 78 L.T. 89.
- (iv.) **Q. B. D.**—*Stamp Duty—Agreement for Sale of Lease and Goodwill of Public-house—Stamp Act, 1891*, s. 59 (i.).—By sect. 59 (i.) of the Stamp Act, an agreement "for the sale of any equitable estate or interest in any property whatsoever as for the sale of any estate or interest in any property except lands . . . shall be charged with the same *ad valorem* duty . . . as if it were an actual conveyance on sale." An agreement under seal was entered into, "that the vendor shall sell and the syndicate shall purchase" the goodwill, lease, &c., of the business of a licensed victualler; and the vendor undertook, at the option of the purchaser, to execute a declaration of trust of the leasehold premises if the landlord's assent to an assignment was not obtained. The consideration to be paid was not apportioned between the lease and the goodwill. A declaration of trust only was executed, and it bore a 10s. stamp. A question arose as to the duty payable on the agreement, and it was *held*, that the agreement was not one for the sale of an equitable interest, as there was no contract on the part of the buyer to purchase such an interest; but that it was an agreement for the sale of an interest in lands, as the goodwill of a public-house is attached to the land, and that therefore *ad valorem* duty was not chargeable.—*West London Syndicate v. Commissioners of Inland Revenue*, L.R. [1898] 1 Q.B. 226; 77 L.T. 797.
- (v.) **C. A.**—*Estate Duty—Deduction for Mortgages—Finance Act, 1894* (57 & 58 Vict., c. 30), ss. 1, 2, 7.—On the facts stated in 22, p. 107, ii., it was *held*, reversing the decision of the Court below, that no deduction should be made in respect of the mortgage debt.—*In re Estate Duty payable on the Death of the Second Earl Cowley*, L.R. [1896] 1 Q.B. 855; 77 L.T. 669.

- (i.) **C. A.—Partnership between Father and Son—Succession Duty Act, 1853** (16 & 17 Vict., c. 51), s. 2.—By a deed of partnership entered into for five years between father and son, it was agreed, though the son contributed no money, that two-thirds of the estimated capital should be taken as brought in by the father and one-third by the son, and that if the father died (as he did) during the term, the son should have the whole business, paying £10,000 to the father's executors. *Held*, that the arrangement was made for the benefit of the son rather than as a sale to him of the business on the event, and that the Crown was entitled to succession duty. *Fryer v. Morland* (L.R. 3 Ch. Div. 675; 35 L.T. Rep. 458) distinguished.—*Attorney-General v. Brown*, 77 L.T. 591.
- (ii.) **Q. B. D.—Death Duties—Assignment by Deed—Customs and Inland Revenue Acts, 1881** (44 & 45 Vict., c. 12), s. 38; 1889 (52 & 53 Vict., c. 7), s. 11 (1); *Finance Act, 1894*, ss. 1, 2 (1, c.).—Property subject to a rent charge and covenants and in certain events, to a power of revocation, was conveyed by the person absolutely seised to his heir presumptive, the defendant, and by a later deed the rent charge and the power of revocation were for good consideration released. On the death of the grantor the defendant succeeded to the property. *Held*, that estate duty was payable.—*Attorney-General v. Earl Grey*, L.R. [1898] 1 Q.B. 318; 77 L.T. 581.
- (iii.) **Q. B. D.—Income Tax Act** (5 & 6 Vict., c. 35), ss. 41, 44.—*Business Carried on in the United Kingdom by a Non-resident*—A merchant in the United States occasionally sent goods for disposal by commission agents in England who fixed the prices, invoiced the goods in their own names, and guaranteed payment by the purchasers, but had no knowledge of the exporter's profits or losses on the transactions. *Held*, that income tax was payable on the profits and that the agents were rightly assessed under sect. 41.—*Watson v. Sandie and Hall*, L.R. [1898] 1 Q.B. 326; 77 L.T. 528.
- (iv.) **C. D.—Probate Duty—Estate in Jamaica**.—A testator domiciled in England made an English will leaving property in Jamaica to trustees in England under an ultimate trust for sale and distribution. *Held*, that an ultimate beneficiaries' interest was an English asset and liable to probate duty. Lord Sudeley v. *Attorney-General* (22, p. 77, ii., and 21, p. 82, vi.) followed.—*In re Smyth*; *Leach v. Leach*, L.R. [1898] 1 Ch. 89; 77 L.T. 514.

#### River:—

- (v.) **Q. B. D.—Riparian Rights—Interpretation of Local Acts—Burnley Borough Improvement Acts, 1871** (34 & 35 Vict., c. 154), ss. 134, 135; 1883 (46 & 47 Vict., c. 77), s. 46.—By sect. 135 of the Burnley Improvement Act, 1871, justices were empowered to order the removal of any building erected within 15 feet of the centre of a local stream; but nothing was to prevent riparian owners from spanning the stream by arches of not less than 80 feet. By sect. 46 of the Burnley Borough Improvement Act, 1883, notwithstanding anything in the Act of 1871, every building thrown over the stream was required to leave a clear space of 80 feet between itself and any building on the opposite side. *Held* (Lawrence, J., dissenting), that so far as there was inconsistency between the two sections, sect. 46 must be taken to override and limit sect. 135.—*The Burnley Co-operative Society v. Pickles*, 77 L.T. 808.

#### Sale of Goods:—

- (vi.) **C. D.—Manufacturer's goods advertised below his prices by dealer who had none in stock—Injunction—Sale of Goods Act, 1893** (56 & 57 Vict., c. 71), s. 5.—Pianos of a certain make were advertised by a dealer, who had not any in stock, at less than the manufacturer's price. On an action for injunction, it was *held* that in accordance with *Allen v. Flood* the motive of the dealer could not be enquired into; that under

sect. 5 of the Sale of Goods Act his deficiency of stock afforded no ground of complaint to the manufacturer; that the defendant could in the absence of fraud put his own price on goods he offered for sale; and that the damage complained of was not the result of misrepresentation in the advertisement.—*Ajello v. Worsley*, L.R. [1898] 1 Ch. 274; 77 L.T. 783.

**School Board:—**

- (i.) **C. A.**—*Election Petition—Order for Statement as Special Case—Appeal—Municipal Corporations Act, 1882 (45 & 46 Vict., c. 50), s. 98, sub-s. 4—Municipal Elections General Rules, rr. 48 & 57—Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict., c. 70), s. 36.*—An appeal lies by leave of the Court from an order of a judge in chambers directing a school board election petition to be stated as a special case.—*Lord Monkswell and Others v. Thompson*, 77 L.T. 707.
- (ii.) **Q. B. D.**—*Election—Petition—Recount.*—At a poll for five members to serve on the school board T. was fifth, and was declared elected. On a recount it was found that the petitioner not T. was entitled to the fifth place, and he claimed the seat. It was contended that the petitioner must shew that T. was not among the first five candidates, and that as the recount had been limited to the votes given to two candidates this had not been shown. *Held*, that the petitioner was entitled to the seat, and that as there had been no petition within 21 days against the return of the other persons declared elected, the return must be taken as correct.—*In re An Election for Members of the School Board; Monkswell and Others v. Thompson*, 76 L.T. 116.

**Settlement:—**

- (iii.) **C. D.**—*Settler's own Property—Bankruptcy—Action to set aside Settlement—Costs.*—A trustee in bankruptcy succeeded in an action against trustees of a settlement to set aside limitations in the event of the settler's bankruptcy. The trustees of the settlement were allowed to retain out of income in their hands costs as between solicitor and client, but beneficiaries, who had been joined as defendants at the request of the settlement trustees, were not allowed costs.—*Merry v. Pownall*, L.R. [1898] 1 Ch. 306.
- (iv.) **C. D.**—*Devise to Uses—Power of sale and of appointment—Legal Estate.*—Real estate was devised to use of a daughter for life, with remainder to use of such of her children as she should appoint, and in default to the use of the children as tenants in common. The trustees of the will were empowered to sell with the consent of the person in possession if adult, and if not at their own discretion. The daughter by her will appointed to trustees in trust for sale, and to stand possessed of the proceeds for the children. *Held*, that the legal estate was well appointed by the daughter's will, and that her trustees were the proper persons to sell.—*In re Paget; in re Mellor; Mellor v. Mellor*, L.R. [1898] 1 Ch. 290; 78 L.T. 72.
- (v.) **C. D.**—*Appointment to Person Entitled in Default.*—An infant who was an only child, conveyed to trustees by a post-nuptial settlement, which was silent as to after acquired property, her interest under the marriage settlement of her parents. By this earlier settlement a power was reserved to the mother of appointment amongst any of the children of her marriage, and on failure the property was to go to them equally, or if there should be but one child to that child wholly. After the post-nuptial settlement the mother appointed to her daughter, who had then attained full age. *Held*, that the interest which the daughter took under the appointment was not comprised in the post-nuptial settlement which she had made. *Sweetapple v. Horlock* (41 L.T. Rep. 272; L.R. 11 Ch. Div. 745) followed.—*Lovett v. Lovett*, L.R. [1898] 1 Ch. 82; 77 L.T. 651.



- (i.) **P. D.**—*Motion to vary—Question of Legitimacy of Child Born during Wedlock.*—Where in an undefended suit of a husband for dissolution of marriage the wife had declared that a child born during wedlock was not the offspring of the husband, the Court on a motion to vary settlements directed the official solicitor to present a petition for declaration of legitimacy on behalf of the child.—*Douglas v. Douglas and Trevor*, 78 L.T. 88.

**Ship:—**

- (ii.) **H. L.**—*Collision—Incoming and Outgoing Ships—Orders of Harbour Master.*—A tug was leaving a lock as a steamer was coming in. The harbour master ordered the tug to go ahead and the steamer to go astern, but the engines of the latter were reversed only sufficiently to keep her stationary, and a collision took place between the two vessels. *Held* (reversing the decision of the Court below) that the tug was not to blame as she was bound to obey the orders of the harbour master; that the incoming steamer should have given way to the outgoing ship, and that the steamer had, further, disobeyed the harbour master's orders.—*Taylor v. Burger*, 78 L.T. 98.
- (iii.) **P. D.**—*Pilotage—"Extra" Services—Mersey Dock Acts Consolidation Act, 1858 (21 & 22 Vict., c. 92), s. 221.*—If an inward bound ship is taken to one or more stages at the port of Liverpool, her owners will have to pay the "extra" charge for each stage which the Mersey Docks and Harbour Board have, under sect. 221 of their Act, power to fix.—*The Servia; The Corinthia*, L.R. [1898] P. 36; 78 L.T. 54.
- (iv.) **C. A.**—*Bill of Lading—Bullion—Implied Warranty.*—Bullion was shipped, under a bill of lading, on one of the vessels of the P. and O. Company having a bullion room; and was stolen. *Held*, affirming judgment of Court below, that there was an implied warranty that the bullion room was fit to resist thieves, and that the company was responsible for the loss.—*Queensland National Bank, Limited, v. Peninsular and Oriental Steam Navigation Co.*, 78 L.T. 67.
- (v.) **C. A.**—*Incorporation into Bill of Lading of Conditions of Charter-Party.*—By a charter-party, a vessel was to load a full and complete cargo of timber, "including a deck cargo at merchant's risk." By the bill of lading, the timber was to be delivered as shipped in good condition: "freight and other conditions as per charter-party." *Held* (dissentientia, Rigby, L.J.), that the above words of the charter-party were not incorporated into the bill of lading, and that the shipowner was liable for damage to a deck cargo.—*Diedrichsen v. Farquharson & Co.*, L.R. [1898] 1 Q.B. 150; 77 L.T. 543.
- (vi.) **C. A.**—*Charter-Party—Exceptions—"Other Causes" are Ejusdem Generis.*—By a charter-party, charterers were not to be liable for delays from "accidents to railways" and "other causes beyond charterers' control." Owing to an accident on the railway, goods were delayed, and the men employed to load were therefore discharged. When the goods arrived at the port of loading, labour could not be obtained. On a claim for damages for detention of ship, *held*, that the general clause, excepting "other causes, &c.," referred to matters *ejusdem generis* with the antecedent exception, and that the delay after the arrival of the goods was not owing to an "accident on the railway."—*In the matter of an Arbitration between Richardsons and Samuel & Co.*, L.R. [1898] 1 Q.B. 261.
- (vii.) **P. D.**—*Insurance—Policy—Construction—"Fire, and all other Perils, Losses," &c.* Insurance against fire and "all other perils, losses and misfortunes" was effected on a freight of coal for Valparaiso. Owing to heating of the coals, part of the cargo had to be discharged on the voyage, and only the remaining portion was delivered at Valparaiso. *Held*, that the underwriters were liable for loss of freight as a partial

loss under the policies, as it was known that there was imminent danger of fire, not merely a fear of fire; and if it were not, strictly speaking, a loss by fire, it was a loss *ejusdem generis* covered by the general words in the policies.—*The Knight of St. Michael*, L.R. [1898] P. 30; 88 L.T. 90.

- (i.) **Q. B.**—*Insurance*—*Ship "Sailing" on a Specified Day*.—Goods were insured on a ship "sailing on or after March 1st." The master, to keep the crew together, moved from the wharf on the night of February 29th, and anchored out in the river till the next morning, when he proceeded on the voyage. In an action on the policy, it was held, that the ship sailed on March 1st.—*Sea Insurance Co. v. Blogg*, L.R. [1898] 1 Q.B. 27.
- (ii.) **Com. Court.**—*Insurance*—"Collision with any Ship or Vessel".—Insurance against damage from "collision with any ship or vessel" was held to cover injury from contact with a sunken barge.—*Chandler v. Blogg*, L.R. [1898] 1 Q.B. 32; 77 L.T. 524.
- (iii.) **P. D.**—*County Court*—*Judgment in rem*—*Mortgagees*—*County Court Admiralty Jurisdiction Act, 1868* (31 & 32 Vict., c. 71), s. 3, sub-s. 3; ss. 12, 23—*County Court Rules, 1892*, r. 42—*County Court (Admiralty) Forms, No. 331*.—A registrar of shipping refused to register, except subject to an outstanding mortgage, a bill of sale of a ship sold under an execution issued by a county court after judgment in an action *in rem* for damages by collision. Held, that the power given to a county court under the above sections of the Act of 1868 was effectual against all persons having an interest in the vessel, and that the ship could be sold free from incumbrance.—*The Ruby*, L.R. [1898] P. 52.
- (iv.) **C. C. R.**—*Seaman*—*Intimidation*—*Conspiracy and Protection of Property Act, 1875* (38 & 39 Vict., c. 86), s. 7—*Merchant Shipping Acts, 1854* (17 & 18 Vict., c. 104); 1894 (57 & 58 Vict. c. 60)—*The Conspiracy and Protection of Property Act* is, by sect. 16, not to apply to "seamen," i.e., to persons employed under the Merchant Shipping Acts. Persons not actually so engaged, though their calling is the sea, are not exempt from the punishments of the Act.—*Reg. v. Lynch and Jones*, L.R. [1898] 1 Q.B. 61; 77 L.T. 568.
- (v.) **P. D.**—*Ship's Husband*—*Action in rem for Wages*.—*Admiralty Court Act, 1861* (24 Vict., c. 10), s. 10—*County Court Admiralty Jurisdiction Act, 1868*, s. 3, sub-s. 2. A ship's husband is not a seaman within sect. 10 of the Admiralty Court Act, and has no maritime lien on which to found an action *in rem* for wages under the County Court Admiralty Jurisdiction Act.—*The Ruby, No. 2*, L.R. [1898] P. 59.

**Solicitor:—**

- (vi.) **C. D.**—*Costs*.—*Charge on Property*.—*Delivery up of Documents*.—A firm of solicitors took a retainer and charge in which the following words occurred, "and I charge the aforesaid interests and property with the payment of your proper costs, charges, valuer's fees, and expenses thereof, and of any moneys I may now or hereafter owe you on any account." Held, that the security must be taken to be a contract to postpone the payment of costs until the property charged, which was a reversionary interest, came into possession, and that the solicitors had no lien on the client's documents. *In re Taylor, Stillman, and Underwood*; *ex p. Payne Collier* (64 L.T. Rep. 605; L.R. [1891] 1 Ch. 590) followed.—*In re Douglas Norman & Co.*, L.R. [1898] 1 Ch. 199; 77 L.T. 552.
- (vii.) **Q. B. D.**—*Application to Strike Off Rolls in England*.—*A Solicitor Struck off Rolls in a Colony*.—A solicitor in England was suspended for misconduct. He was subsequently admitted a solicitor at the Cape, but was struck off the rolls for misappropriating money. An application to strike him off the rolls in England on the sole evidence of the

order of the Colonial Court, was refused on the ground that there was no precedent for such an order without evidence being furnished of the circumstances of the offence.—*In re M. (a Solicitor)*; *e. p. Incorporated Law Society*, L.R. [1898] 1 Q.B. 331; 77 L.T. 661.

- (i.) **C. D.—Uncertificated Solicitor—Costs not Allowed—Solicitors Act, 1874, (37 & 38 Vict., c. 68), s. 12.**—A client had obtained a common order to tax a solicitor's bill. For a part of the time in which the work charged for was done the solicitor was without a certificate. *Held*, that during such time no costs could be allowed, notwithstanding that the order contained the usual submission by the client to pay what was due. *In re Jones*, 21 L.T. Rep. 482; L.R. 9 Eq. 63, would not apply since the Solicitors Act, 1874.—*In re Sweeting (a Solicitor)*, L.R. [1898] 1 Ch. 268; 78 L.T. 6.
- (ii.) **C. D.—Will—Solicitor—Executor with Power to Charge—Estate Insolvent.**—A solicitor who was a sole acting executor was authorised by the will to make professional charges. The estate became insolvent, and it was *held* that he was not entitled to profit charges, as the power given was in the nature of a legacy.—*In re White; Pennell v. Franklin*, L.R. [1898] 1 Ch. 297; 77 L.T. 793.

#### Statutes:—

- (iii.) **C. D.—Construction—"On the Day"—"From and After the Day."**—By a Provisional Order which was to come into operation "on the day" on which it received the Royal Assent, the defendants were authorised to carry on in Sheffield an electric undertaking which the plaintiffs were authorised to purchase by the issue of such an amount of corporation stock as would produce an annuity of 5 per cent. on the purchase money. By another Provisional Order which was to come into operation "from and after the day" on which it received the Royal Assent, the power which the corporation had previously possessed of issuing irredeemable stock was repealed. Both Provisional Orders received the Royal Assent on the same day. On the corporation giving notice to buy, the company refused to sell on the contention that the corporation were bound to buy with a stock which they had no power to issue. In an action by the corporation for specific performance, it was *held* that the annuity named was a perpetual annuity which could only be met by irredeemable stock, and that even if the Provisional Orders had come into operation on the same day they could not be construed together so as to reserve to the corporation power to issue such stock for this purpose.—*Corporation of Sheffield v. Sheffield Electric Light and Power Co., Limited*, L.R. [1898] 1 Ch. 203; 77 L.T. 616.

#### Telegraph:—

- (iv.) **R. & C. C.—Post Office—Underground Wires—Telegraph Act, 1863 (26 & 27 Vict., c. 112), s. 5, sub-s. 3; s. 9.**—The objections which a road authority is authorised to raise under sect. 5, sub-sect. 3 of the Telegraph Act, 1863, to the placing of wires under a street do not include objections to the mode of carrying on the telegraph service or to the charges made for such service.—*Postmaster-General v. Corporation of London*, 78 L.T. 120.

#### Tenant for Life:—

- (v.) **C. D.—Remainderman—Leaseholds—Liability for Covenants.**—A testator bequeathed a leasehold house to a niece, his executrix for life, and afterwards to his nephew, his executor. *Held*, that the tenant for life was not liable to pay the rent or to perform the covenants of the lease.—*In re Tomlinson; Tomlinson v. Andrew*, L.R. [1898] 1 Ch. 232; 78 L.T. 12.

**Trade Name:—**

- (i.) **C. D.**—*Name assumed for Competition with known firm—Fraud.*—A company which bought a boot business from a man using the name of Louis Pinet, and took the title of "Maison Pinet, Limited," was restrained from continuing sales without clearly distinguishing their goods from those of F. Pinet et Cie., of Paris. The company then made arrangements to sell their business to a new company to be called "Maison Louis Pinet, Limited." On Messrs. F Pinet et Cie. discovering that the vendor to the company merely assumed the name of Louis Pinet by deed poll, they applied for, and the Court granted, an injunction restraining all the parties concerned in the company from using the name of Pinet in connection with a boot business, on the ground that it was adopted by the vendor for fraudulent purposes. —*F. Pinet et Cie v. Maison Louis Pinet, Limited*, L.R. [1898] 1 Ch. 170; 77 L.T. 618.
- (ii.) **P. C.**—*"Flaked Oatmeal"—User.*—Plaintiffs claimed that they had by user so acquired the right to the term "Flaked Oatmeal" that its use by the defendants had the effect of passing off their goods on the plaintiffs. *Held*, that the term being an ordinary one, and applicable to goods of others than the plaintiffs, and in the absence of proof that its use by the defendants would have the effect stated by the plaintiffs, the action must be dismissed. *Reddaway v. Bonham*, 1896 (A.C. 108), approved.—*Parsons and Others v. Gillespie and Others*, L.R. [1898] A.C. 289.

**Trustee:—**

- (iii.) **Q. B.**—*Will—Breach of Trust.*—Under a will, trustees were authorised to apply towards the advancement in life of each of two daughters of the testator a sum not exceeding £500 of "her presumptive share," and of what came within the term "advancement in life," the trustees were to be sole judges. Further, by the terms of the will the shares were to become vested on the daughters respectively attaining majority, and then each daughter was to have the income of her share for life with a testamentary power of appointment of the corpus amongst her children if she had any, but unrestricted if she had none. Failing appointment the next of kin were to take. One daughter married and had children. Her husband was indebted to one of the trustees, and to discharge this debt there was advanced out of the fund, after both beneficiaries were of full age, a sum of £500 to the unmarried daughter, and of £250 to the other. The children of the latter brought an action against the trustees for breach of trust. *Held*, that the power of the trustees to make an advance ceased when the shares became vested; that an advance to pay debts of the husband of one of the beneficiaries would not have been warranted if it had been made while the shares were "presumptive;" and that therefore the amount advanced to the married daughter must be replaced. With respect to the advance made to the unmarried daughter, as the plaintiffs had only a possibility of an interest, no order was made.—*Molyneux and Others v. Fletcher and Clark*, 78 L.T. 111.
- (iv.) **O. D.**—*Postponing Sale of Improper Investments—Judicial Trustees Act, 1896 (59 & 60 Vict., c. 35), r. 3.*—Relief, under sect. 3 of the Judicial Trustees Act, was refused to an executrix and trustee who had deferred for fourteen years to dispose of part of the residuary personal estate, and she was *held* liable for the whole loss on stocks, which had deteriorated in value without being allowed to set off the gain in stocks which had increased in value.—*In re Barker; Ravenshaw v. Barker*, 77 L.T. 712.

**Vendor and Purchaser:—**

- (v.) **O. D.**—*Contract—False Representations by Agent as to Principal.*—Where the defendant was induced to contract to sell property by false

representations of an agent as to the name of his principal, the Court held, that the contract could not be specifically performed.—*Archer v. Stone*, 78 L.T. 84.

- (i.) **C. D.**—*Title—Notice to Rescind.*—A moiety of a tenancy in common was bought at auction of mortgagees. The mortgagors were trustees, to whom was given a power of sale over the moiety, with directions to invest £12,000 on certain trusts. A summons was taken out for rescission, on the ground that the vendors could not give a good title. *Held*, that the defect could be removed (1) by the trustees adopting the contract, or (2) by obtaining the sanction of the Court, or (3) by shewing that the £12,000 had been properly invested. Failing one of these, the notice to rescind would be effectual.—*In re Cooke and Holland's Contract*, 78 L.T. 106.

### Volunteer :—

- (ii.) **Q. B.**—*Subject to Military Law—Assault and False Imprisonment.*—*Army Act, 1881 (44 & 45 Vict., c. 58), ss. 41, 45, 158, 176.*—A volunteer just at the close of a period of training was charged with larceny, and was, by the adjutant's orders, taken into custody, conveyed under escort to his place of residence in another county, and then handed to the civil authorities. The prisoner was tried and acquitted. In an action for assault and false imprisonment against the escort, *held* that the subjection of the parties to military law ceased with the period of training, and that the act of the defendants could not be justified under the Army Act, 1881, or as the act of soldiers obeying the orders of a superior officer.—*Marks v. Frogley*, L.R. [1898] 1 Q.B. 396; 78 L.T. 77.

### Will :—

- (iii.) **C. D.**—*Absolute Bequest of Personality—Codicil directing a Life Interest with Remainder to Children "instead of such Bequest"—Revocation pro tanto only.*—A testator made an absolute bequest of personality to his two daughters; but by a codicil "instead of such bequests in the manner expressed in my said will," directed his executors to stand possessed of the property on trust to pay a moiety of the income to each of the daughters for life, and on their respective deaths to pay the respective moiety of principal to the respective children in such proportion as the mothers should by deed or will appoint, and, in default, equally. One daughter died without having had any issue. *Held*, that there was no intestacy as to the moiety given to her.—*In re Wilcock; Kay v. Dewhurst*, L.R. [1898] 1 Ch. 95; 77 L.T. 679.
- (iv.) **C. D.**—*Gift over after Absolute Gift.*—A testator after giving all his real and personal property to his wife for her absolute use and benefit, with the fullest power during her lifetime to sell and dispose of it for her maintenance, directed that after her death such parts as remained undisposed of should be in trust for other persons. *Held*, that the gift over was void. *Williams v. Pounder* (76 L.T. 104) distinguished.—*In re Jones; Richards v. Jones*, 78 L.T. 75.
- (v.) **H. L.**—*Construction—Legacies charged on Realty.*—Though a charge of legacies "on all my lands" does not rebut the presumption that real estate specifically devised is free from claims of legatees, yet the question is one of intention. A testator bequeathed pecuniary legacies to be charged on his real and personal estates if the personal estate was insufficient. He devised the estate A. to one son, and other lands specifically mentioned, which were the only other lands he possessed, he devised to another son "subject as aforesaid." *Held*, affirming the judgment of the Court below, that there was an intention to charge the legacies, after exhaustion of the personality, on all the real estate.—*Bank of Ireland v. McCarthy*, L.R. [1898] A.C. 181; 77 L.T. 777.

- (i.) **C. D.**—*Construction—Income to a class.*—The rule that a bequest to children of a person is confined to children living at the testator's death, applies to a bequest of income.—*In re Powell; Crossland v. Holliday*, L.R. [1898] 1 Ch. 227; 77 L.T. 649.
- (ii.) **C. A.**—*Executor—Intermeddling—Wilful Default.*—Decision of Chancery Division (Vol. 22, p. 88, iv.) affirmed.—*In re Stevens; Cook v. Stevens*, L.R. [1898] 1 Ch. 182; 77 L.T. 508.
- (iii.) **P. D.**—*Destruction of Will in belief that Codicil was substitute—Wills Act (1 Vict., c. 26), s. 20—Probate.*—A testator executed a codicil reciting and amending the disposition of his property made by the will, and then destroyed the will under the impression that it was of no use. The Court holding that this was not a case of dependent relative revocation, but of mistake, pronounced for the will as contained in the draft and the codicil together. *Perrott v. Perrott*, 14 East, 428, considered.—*Beardsley v. Lacey and Others*, 78 L.T. 25.
- (iv.) **P. D.**—*Will of Personality—Abroad—Certified Copy—Probate.*—When a will confirms an earlier one, probate of both is necessary (following, in the goods of Harris, 28 L.T. 630; 2 P. and D. 83), and if one has been proved in a colonial court, a certified copy of it will be accepted.—*In the goods of Western*, 78 L.T. 49.
- (v.) **P. D.**—*Will made Abroad—Law of Congo State—24 & 25 Vict., c. 114, s. 1.*—A holograph unattested will made by an English subject in the Congo Free State was held to fall within sect. 1 of the above Act, on the ground that the local court had upheld it.—*Stokes v. Stokes; the Church Missionary Society cited*, 78 L.T. 50.
- (vi.) **P. D.**—*Joint Will—Probate.*—In a joint will by husband and wife, the Court, on the death of the wife, granted probate of so much of the will as became operative at her death.—*In the goods of Piazzi Smith*, L.R. [1898] P. 7.
- (vii.) **P. D.**—*Probate—Executor—Retraction of Renunciation—Court of Probate Act, 1857 (20 & 21 Vict., c. 77), s. 79.*—Where an executor absconded after taking probate, the Court allowed the co-executor to retract a renunciation and take probate.—*In the goods of Stiles*, L.R. [1898] P. 12; 78 L.T. 82.
- (viii.) **P. D.**—*Probate—Several Testamentary Papers.*—A testatrix, who by the will of her father had power of testamentary appointment over £4,000 amongst her children, made three wills. By the first she bequeathed to one of her daughters £4,000, "the sum left to me by the will of my father;" by the second she left to the same daughter £4,000 and a share of residue; and by the third she left the whole of her property to the same daughter. Held, that the second will was revoked by the third, as both professed to deal with the entire property; and that as the general bequest in the third did not revoke the execution of the power on the first, probate of the first and third wills should be granted.—*Cadell and Another v. Wilcocks and Others*, L.R. [1898] P. 21; 78 L.T. 88.

## INDEX.

**AJELLO v. WORSLEY** (L.R. [1898] 1 Ch. 274; 77 L.T. 783), 82, vi.  
**Allen v. Flood** (L.R. [1898] A.C. 1; 77 L.T. 717), 74, vi.  
**Anglo-American Exploration and Development Co., in re** (L.R. [1898] 1 Ch. 100), 66, iii.

**Anglo-Continental Corporation of Western Australia, in re** (L.R. [1898] 1 Ch. 827), 66, iv.  
**Archer v. Stone** (78 L.T. 84), 87, v.  
**Ashton-under-Lyne Corporation v. Pugh** (L.R. [1898] 1 Q.B. 45; 77 L.T. 588), 78, vii.

- Ashton, *in re*; Ingram v. Papillon (L.R. [1898] 1 Ch. 142; 77 L.T. 582); 23, 15, i.; 77, iii.
- Ashworth v. Wells (77 L.T. 691), 69, iv.
- Attenborough, *c. p.*; *in re* Cole (L.R. [1898] 1 Q.B. 200; 78 L.T. 23), 62, iv.
- Attorney-General v. Brown (77 L.T. 591), 82, i.
- Attorney-General v. Earl Grey (L.R. [1898] 1 Q.B. 318; 77 L.T. 531), 82, ii.
- Attorney-General v. New York Breweries Co. (L.R. [1898] 1 Q.B. 205; 78 L.T. 61), 23, 17, iv.; 81, ii.
- Attorney-General v. Teddington Urban Council (L.R. [1898] 1 Ch. 66), 23, 50, ii.
- Attorney-General for Dominion of Canada v. Attorney-General for Province of Ontario (L.R. [1898] A.C. 247; 77 L.T. 589), 66, ii.
- BADISCHE ANILIN UND SODA FABRIK v. BASLE CHEMICAL WORKS, BIND-SCHIEDLER (L.R. [1898] A.C. 200; 77 L.T. 573), 23, 11, iv.; 76, vi.
- \* Bagley v. Butcher (L.R. [1898] 1 Q.B. 67; 77 L.T. 525), 76, iii.
- Baillie's Case; *in re* International Society of Auctioneers and Valuers (L.R. [1898] 1 Ch. 110; 77 L.T. 523), 66, vi.
- Baker v. Williams (L.R. [1898] 1 Q.B. 23), 23, 86, v.
- Bank of Ireland v. McCarthy (L.R. [1898] A.C. 181; 77 L.T. 777), 68, v.
- Bankruptcy Notice, *in re*, A (L.R. [1898] 1 Q.B. 383; 77 L.T. 710), 62, vi.
- Baring v. Inland Revenue Commissioners (L.R. [1898] 1 Q.B. 76), 23, 51, vii.
- Barker, *in re*; Ravenshaw v. Barker (77 L.T. 712), 87, iv.
- Barton, *in the goods of* (L.R. [1898] P. 11; 77 L.T. 629; 78 L.T. 81), 61, ii.
- Bartlett v. Mayfair Property Co., Ltd. (77 L.T. 652), 66, ii.
- Bateman v. Faber (L.R. [1898] 1 Ch. 144; 77 L.T. 576), 23, 10, iv.; 74, iii.
- Baxter v. Middleton (L.R. [1898] 1 Ch. 813), 79, i.
- Beardale v. Lacey (78 L.T. 25), 89, iii.
- Beckwith, *c. p.*; *in re* New British Iron Co. (L.R. [1898] 1 Ch. 324), 67, v.
- Bennett v. Slater (L.R. [1898] 1 Q.B. 469), 70, vi.
- Bethnal Green Vestry v. London School Board (L.R. [1898] A.C. 190; 77 L.T. 635), 75, i.
- Birmingham Breweries, Limited, v. Jameson (78 L.T. 37), 64, ii.
- Blumberg v. Life Interests and Reversionary Securities Corporation (L.R. [1898] 1 Ch. 27; 77 L.T. 506), 78, vi.
- Board of Trade, *c. p.*; *in re* Hunt (L.R. [1898] 1 Q.B. 287), 63, v.
- Boord v. The African Consolidated Land and Trading Co. (77 L.T. 553), 67, iii.
- Brandon v. Hughes; *in re* Hughes (77 L.T. 564), 74, iv.
- Brinsmead (Thos. Edwd.) and Sons; *in re* Tomlin's Case (L.R. [1898] 1 Ch. 104; 77 L.T. 521), 67, i.
- Brown v. Attorney-General for New Zealand (L.R. [1898] A.C. 234), 64, v.
- Brickwood & Co. v. Reynolds (L.R. [1898] 1 Q.B. 95), 23, 52, i.
- Brims, *c. p.*; *in re* Palmer (L.R. [1898] 1 Q.B. 419; 77 L.T. 709), 68, ii.
- British Cycle Manufacturing Co., Ltd., *in re* (77 L.T. 688), 78, iv.
- Brune v. James (L.R. [1898] 1 Q.B. 417; 77 L.T. 802), 68, iv.
- Buckley v. Hanson (77 L.T. 664), 71, iii.
- Bullen v. Wakely (77 L.T. 689), 70, viii.
- Burnley Co-operative Society v. Pickles (77 L.T. 808), 82, v.
- Butler, *in the goods of* (L.R. [1898] P. 9), 23, 49, iii.
- CADELL v. WILCOCKS (L.R. [1898] P. 21; 78 L.T. 83), 89, viii.
- Caledonian Railway Co. v. Warwick (L.R. [1898] A.C. 216; 77 L.T. 570), 80, iv.
- Cannon Brewery v. Nash (77 L.T. 648), 72, vii.
- Carinthia, *the*; *the* Servia (L.R. [1898] P. 86; 78 L.T. 54), 84, iii.
- Carlisle Café Co. and Todd v. Muse Bros. & Co. (77 L.T. 515), 72, iv.
- Carter v. Stephenson Clarke & C (78 L.T. 76) 70, i.

- Castell and Brown, Ltd., in re; c. p.**  
**Union Bank of London (L.R. [1898] 1 Ch. 315; 78 L.T. 109),**  
 65, iv.
- Chandler v. Blogg (L.R. [1898] 1**  
**Q.B. 82; 77 L.T. 524),** 85, ii.
- Chicago and North West Granaries**  
**Co., Ltd., in re; Morrison v. same**  
**Company (L.R. [1898] 1 Ch. 263;**  
**77 L.T. 677),** 65, iii.
- Chioggia, the (L.R. [1898] P. 1),** 23,  
 81, iii.
- Christian v. Christian (78 L.T. 86),**  
 79, iii.
- City of London Brewery Co. v. Com-**  
**missioners of Inland Revenue**  
**(L.R. [1898] 1 Q.B. 408; 78 L.T.**  
**39),** 81, iii.
- Clark, in re; c. p. Clark (L.R. [1898]**  
**1 Q.B. 20),** 23, 30, ii.
- Clifford v. Thames Ironworks and**  
**Shipbuilding Co. (L.R. [1898] 1**  
**Q.B. 314),** 68, ii.
- Cockerton v. London School Board**  
**(L.R. [1898] 1 Q.B. 4),** 70, ii.
- Cole, in re; c. p. Attenborough (L.R.**  
**[1898] 1 Q.B. 290; 78 L.T. 23),**  
 62, iv.
- Cooke and Holland's Contracts (78**  
**L.T. 106),** 88, i.
- Cooke v. Stevens; in re Stevens (L.R.**  
**[1898] 1 Ch. 102; 77 L.T. 508),**  
 89, ii.
- Cowley; in re Estate duty payable on**  
**death of 2nd Earl (L.R. [1898] 1**  
**Q.B. 355; 77 L.T. 668),** 22, 107,  
 ii.; 81, v.
- Crosland v. Holliday; in re Powell**  
**(L.R. [1898] 1 Ch. 227; 77 L.T.**  
**649),** 89, i.
- DARTFORD RURAL COUNCIL v. BEXLEY**  
**HEATH RAILWAY Co (L.R. [1898]**  
**A.C. 210; 77 L.T. 601),** 80, v.
- Davies, in re; c. p. The Equitable**  
**Investment Co., Ltd. (77 L.T. 567),**  
 64, i.
- Davies v. Evans and Others (77 L.T.**  
**688),** 78, iii.
- Davis v. Reilly (L.R. [1898] 1 Q.B.**  
**1),** 63, vi.
- Dawson v. African Consolidated Land**  
**and Trading Co. (L.R. [1898] 1 Ch.**  
**6),** 23, 84, iv.
- Deutsche National Bank v. Paul**  
**(L.R. [1898] 1 Ch. 283; 78 L.T.**  
**35),** 77, v.
- Diederichsen v. Farquharson Bros.**  
**(L.R. [1898] 1 Q.B. 150; 77 L.T.**  
**543),** 84, v.
- Dimond v. Newburn; in re Freeman**  
**(L.R. [1898] 1 Ch. 28),** 23, 52, v.
- Dominion Brewery, Ltd., v. Foster**  
**(77 L.T. 507),** 78, vii.
- Douglas Norman & Co., in re (L.R.**  
**[1898] 1 Ch. 199; 77 L.T. 552),**  
 85, vi.
- Douglas v. Douglas and Trevor (78**  
**L.T. 88),** 84, i.
- Dunmore v. Warham (78 L.T. 38),**  
 77, iv.
- ELLIS v. POND (L.R. [1898] 1 Q.B.**  
**426),** 79, v.
- Equitable Investment Co., Limited,**  
**c. p.; in re Davies (77 L.T. 567),**  
 64, i.
- Estate Duty Payable on Death of**  
**Second Earl Cowley, in re (L.R.**  
**[1898] 1 Q.B. 355; 77 L.T. 668),**  
 22, 107, ii.; 81, v.
- FIELDING & Co. v. CORRY (L.R. [1898]**  
**1 Q.B. 268),** 23, 81, ii.
- Foy, in the goods of (78 L.T. 49),** 61, i.
- Freeman, in re; Dimond v. Newburn**  
**(L.R. [1898] 1 Ch. 28),** 23, 52, v.
- GALLAGHER v. RUDD (L.R. [1898]**  
**1 Q.B. 114),** 23, 41, iii.
- Gayford v. Chouler (L.R. [1898]**  
**1 Q.B. 316; 78 L.T. 42),** 68, vi.
- Gilbert, in re; c. p. Gilbert (L.R.**  
**[1898] 1 Q.B. 282; 77 L.T. 775),**  
 68, i.
- Gower v. Couldridge and Others**  
**(L.R. [1898] 1 Q.B. 348; 77 L.T.**  
**707),** 78, ii.
- Grose v. Grose (78 L.T. 89),** 79, iv.
- HATTON, c. p.; REG. v. WIMBLEDON**  
**U.D. COUNCIL (77 L.T. 599),** 74, ii.
- Hesketh's Case; in re Sale Hotel and**  
**Botanical Gardens Co., Limited**  
**(77 L.T. 681),** 63, i.
- Hill & Co. v. Dalgety & Co. (77 L.T.**  
**541),** 65, i.
- Hinchcliffe v. Sharpe (77 L.T. 714),**  
 68, i.
- Hockey v. Western (78 L.T. 1),** 76, i.
- Hughes, in re; Brandon v. Hughes**  
**(77 L.T. 564),** 74, iv.
- Hunt v. Fripp (77 L.T. 517),** 68, iv.
- Hunt, in re; c. p. Board of Trade**  
**(L.R. [1898] 1 Q.B. 257),** 63, v.
- Hurlston, in the goods of (L.R. [1898]**  
**P. 27),** 79, vii.
- Huttley v. Simmons (L.R. [1898]**  
**1 Q.B. 181),** 67, vi.



- INCORPORATED LAW SOCIETY, *e. p.* ; in re A SOLICITOR** (L.R. [1898] 1 Q.B. 381; 77 L.T. 661), 85, vii.
- Ingram v. Papillon; in re Ashton** (L.R. [1898] 1 Ch. 142; 77 L.T. 682), 23, 15, i.; 77, iii.
- International Society of Auctioneers and Valuers in re; Baillie's Case** (L.R. [1898] 1 Ch. 110; 77 L.T. 523), 66, vi.
- Pzod, in re; e. p. Official Receiver** (L.R. [1898] 1 Q.B. 241; 77 L.T. 640), 63, iii.
- JAY v. BUDD** (L.R. [1898] 1 Q.B. 12), 23, 47, vi.
- Jennings v. Jennings** (77 L.T. 786), 76, v.
- Johnson, in the goods of** (78 L.T. 85), 80, ii.
- Jones v. Spencer** (77 L.T. 536), 78, v.
- Jones and Parry v. Davis** (L.R. [1898] 1 Q.B. 405; 78 L.T. 44), 70, iv.
- KAY v. DEWHIRST; in re WILCOCK** (L.R. [1898] 1 Ch. 95; 77 L.T. 679), 88, iii.
- Kettlewell v. Kettlewell** (77 L.T. 631), 71, vi.
- Knight, in re Agnes M. (a person of unsound mind)** (L.R. [1898] 1 Ch. 257; 77 L.T. 773), 74, i.
- Knight of St. Michael, the** (L.R. [1898] P. 30; 88 L.T. 90), 84, vii.
- Knowles & Sons, Limited, v. Sinclair** (L.R. [1898] 1 Q.B. 170; 77 L.T. 624), 64, iv.
- LABOUCHERE v. HESS** (77 L.T. 559), 73, ii.
- Lacon & Co., *e. p.* ; Reg. v. Thornton** (L.R. [1898] 1 Q.B. 334; 78 L.T. 95), 73, iv.
- Lanchbury v. Bode** (78 L.T. 14), 69, iii.
- Leach v. Leach; in re Smyth** (L.R. [1898] 1 Ch. 89; 77 L.T. 514), 82, iv.
- Leeds and Hanley Theatre of Varieties v. Broadbent** (77 L.T. 665), 75, iv.
- Lewis v. Clay** (77 L.T. 653), 63, vii.
- Lewis v. Poole** (L.R. [1898] 1 Q.B. 164), 23, 41, v.
- Lewis and Davis v. Burrell** (77 L.T. 626), 68, iii.
- Llewellyn and Others v. Vale of Glamorgan Railway Co.** (78 L.T. 70), 80, vi.
- London County Council v. Aylesbury Dairy Co.** (L.R. [1898] 1 Q.B. 106), 23, 45, ii.
- London County Council v. Davies; London County Council v. Rowton House Co.** (77 L.T. 698), 75, ii.
- London County Council and City of London Brewery Co., in re** (L.R. [1898] 1 Q.B. 387), 23, 42, i.
- London and N.W. Railway Co. v. Runcorn Rural Council** (L.R. [1898] 1 Ch. 34), 23, 50, iii.
- Locke-King v. Woking Urban District Council** (77 L.T. 790), 70, vii.
- Lole v. Betteridge; Mallam claimant** (L.R. [1898] 1 Q.B. 256; 77 L.T. 548), 62, v.
- Lovett v. Lovett** (L.R. [1898] 1 Ch. 82; 77 L.T. 650), 83, v.
- Lysaght v. Lysaght; in re Lysaght** (L.R. [1898] 1 Ch. 115; 77 L.T. 637), 67, iv.
- MACKINNON v. CLARK** (77 L.T. 657), 76, ii.
- Mander v. Ridgway** (78 L.T. 118), 68, v.
- Marks v. Frogley** (L.R. [1898] 1 Q.B. 396; 78 L.T. 77), 88, ii.
- Maskelyne British Type Writer, Limited, in re; Stuart v. Maskelyne, &c.** (L.R. [1898] 1 Ch. 133; 77 L.T. 579), 65, vi.
- Mason v. Keays** (78 L.T. 33), 76, iv.
- Matthews, in the goods of** (L.R. [1898] P. 17; 77 L.T. 680), 80, i.
- McLean v. Monk** (77 L.T. 663), 61, iii.
- Medows, in re; Norie v. Bennett** (L.R. [1898] 1 Ch. 300; 78 L.T. 13), 69, ii.
- Mellor v. Mellor; in re Paget** (L.R. [1898] 1 Ch. 290; 78 L.T. 72), 83, iv.
- Mercer v. Vans Colina** (78 L.T. 21), 62, iii.
- Merry v. Pownall** (L.R. [1898] 1 Ch. 306), 83, iii.
- Mersey Docks and Harbour Board v. Cunard S.S. Co. (the Servia; the Carinthia)** (L.R. [1898] P. 36; 78 L.T. 55), 84, iii.
- Mill End Vestry v. Whitby** (78 L.T. 80), 72, v.
- Millard v. Wastall** (L.R. [1898] 1 Q.B. 342; 77 L.T. 692), 80, iii.
- Molyneux and Others v. Fletcher and Clark** (78 L.T. 111), 87, iii.
- Monkswell, Lord, and Others v. Thompson** (L.R. [1898] 1 Q.B. 353; 77 L.T. 707), 83, i.

Monkswell, Lord, and Others v. Thompson; *in re* Election to London School Board (78 L.T. 116), 83, ii.

Morley v. Carter (L.R. [1898] 1 Q.B. 8), 23, 41, i.

Morrison v. Chicago and North Western Granaries Co., Ltd. (L.R. [1898] 1 Ch. 263; 77 L.T. 677), 65, iii.

Moult v. Halliday (L.R. [1898] 1 Q.B. 125; 77 L.T. 794), 74, vii.

Muddock v. Blackwood (L.R. [1898] 1 Ch. 58), 23, 35, iii.

NEW BRITISH IRON CO., *in re*; *e. p.* BECKWITH (L.R. [1898] 1 Ch. 324), 67, v.

New Zealand Loan & Mercantile Agency Co. v. Morrison (77 L.T. 603), 67, ii.

Norris v. Bennett; *in re* Medows (L.R. [1898] 1 Ch. 300; 78 L.T. 13), 69, ii.

OFFICIAL RECEIVER, *e. p.*; *in re* IZOD (L.R. [1898] 1 Q.B. 241; 77 L.T. 709), 63, iii.

Official Receiver, *e. p.*; *in re* Sprange (77 L.T. 808), 79, ii.

PAGET v. PAGET (L.R. [1898] 1 Ch. 47), 74, v.

Paget *in re*; Mellor v. Mellor (L.R. [1898] 1 Ch. 290; 78 L.T. 72), 83, iv.

Palmer & Co. v. Hosken & Co., *in re* (L.R. [1898] 1 Q.B. 131), 61, iv.

Palmer, *in re*; *e. p.* Brims (L.R. [1898] 1 Q.B. 419; 77 L.T. 709), 63, i.

Parsons v. Gillespie (L.R. [1898] A.C. 239), 87, ii.

Pegge v. Neath & District Tramways Co., Ltd. (L.R. [1898] 1 Ch. 183; 77 L.T. 550), 65, v.

Pennell v. Franklin; *in re* White (L.R. [1898] 1 Ch. 297; 77 L.T. 793), 86, ii.

Peñton v. Barnett (L.R. [1898] 1 Q.B. 276; 77 L.T. 645), 73, i.

Perry's Almshouses Charity (78 L.T. 103), 64, iii.

Pethick Bros. v. Dorset County Council (77 L.T. 683), 71, i.

Peveril Gold Mines, Ltd., *in re* (L.R. [1898] 1 Ch. 122; 77 L.T. 505), 66, v.

Phillips v. London School Board (L.R. [1898] 1 Q.B. 4), 70, ii.

Piazza-Smith, *in the goods of* (L.R. [1898] P. 7), 89, vi.

Piers v. Read; *in re* Piers (78 L.T. 21), 62, vii.

Pinet & Co. v. Maison Louis Pinet, Ltd. (L.R. [1898] 1 Ch. 170; 77 L.T. 613), 87, i.

Pike v. Hamlyn; *in re* Rowe (L.R. [1898] 1 Ch. 153), 23, 56, i.

Pollock v. Garle (L.R. [1898] 1 Ch. 1), 62, i.

Pontefract Assessment Committee v. Hartley and Others (77 L.T. 565), 80, vii.

Pontefract Assessment Committee v. Pontefract Park Trustees (77 L.T. 565), 80, vii.

Postmaster-General v. Corporation of London (78 L.T. 120), 86, iv.

Powell, *in re*; Crosland v. Holliday (L.R. [1898] 1 Ch. 227; 77 L.T. 649), 89, i.

QUEENSLAND NATIONAL BANK, LTD., v. PENINSULAR & ORIENTAL STEAM NAVIGATION CO. (78 L.T. 67), 84, iv.

RALEIGH v. GOSCHEN (L.R. [1898] 1 Ch. 73), 23, 36, iv.

Ravenshaw v. Barker; *in re* Barker (77 L.T. 712), 87, iv.

Reg. v. Cox (L.R. [1898] 1 Q.B. 179; 77 L.T. 534), 68, vii.

Reg. v. Jones (L.R. [1898] 1 Q.B. 119), 23, 39, i.

Reg. v. Justices of West Riding of Yorkshire; *e. p.* Shaw (78 L.T. 47), 73, v.

Reg. v. Lynch and Jones (L.R. [1898] 1 Q.B. 61; 77 L.T. 568), 85, iv.

Reg. v. Mead (L.R. [1898] 1 Q.B. 110), 23, 43, iii.

Reg. v. Rose (78 L.T. 119), 69, i.

Reg. v. Thornton; *e. p.* Lacon and Co. (L.R. [1898] 1 Q.B. 384; 78 L.T. 95), 73, iv.

Reg. v. West (L.R. [1898] 1 Q.B. 174; 77 L.T. 536), 68, viii.

Reg. v. Wimbledon Urban District Council; *e. p.* Hatton (77 L.T. 599), 74, ii.

Richards v. Jones; *in re* Jones (78 L.T. 74), 88, iv.

Richardson and M. Samuel & Co., *in re* (L.R. [1898] 1 Q.B. 261), 84, vi.

Rishton v. Haslingden Corporation (L.R. [1898] 1 Q.B. 294; 77 L.T. 620), 71, ii.

Rogers v. Manchester Packing Co. (L.R. [1898] 1 Q.B. 344; 78 L.T. 17), 70, iii.

Rollason's Registered Design, *in re* (L.R. [1898] 1 Ch. 237; 77 L.T. 605), 77, i.

- Rowe, *in re*; Pike v. Hamlyn (L.R. [1898] 1 Ch. 153), 23, 56, i.
- Royal College of Music v. Parishes of St. Margaret's and St. John's, Westminster (L.R. [1898] 1 Q.B. 804; 77 L.T. 627), 80, viii.
- Ruby, *the* (L.R. [1898] P. 52), 85, iii.
- Ruby, *the*, No. 2 (L.R. [1898] P. 59), 85, v.
- SAUNDERS v. GORE; *in re* SAUNDERS (L.R. [1898] 1 Ch. 17), 23, 29, iii.
- Sale Hotel and Botanical Gardens Co., Limited *in re*; Hesketh's Case (77 L.T. 681), 66, i.
- St. Saviour's Guardians v. Guardians of Poor of Dorking (78 L.T. 29), 77, ii.
- Sea Insurance Co. v. Blogg (L.R. [1898] 1 Q.B. 27), 85, i.
- Seaward v. Drew; Farmer, third party (78 L.T. 19), 72, vi.
- Servia, *the*; *the Carinthia* (L.R. [1898] P. 36; 78 L.T. 54), 84, iii.
- Shaw, *a. p.*; Reg. v. Justices of West Riding (78 L.T. 47), 73, v.
- Sheffield Corporation v. Sheffield Electric Light Co. (L.R. [1898] 1 Ch. 203; 77 L.T. 616), 85, iii.
- Smith v. Galloway (L.R. [1898] 1 Q.B. 71), 23, 89, iii.
- Smyth, *in re*; Leach v. Leach (L.R. [1898] 1 Ch. 89; 77 L.T. 514), 82, iv.
- Smith v. Smith (L.R. [1898] P. 29; 78 L.T. 28), 71, v.
- Solicitor, A, *in re*; *e. p.* Incorporated Law Society (L.R. [1898] 1 Q.B. 381; 77 L.T. 661), 85, vii.
- South African Republic v. La Compagnie Franco-Belge du Chemin de Fer du Nord (L.R. [1898] 1 Ch. 190; 77 L.T. 555), 72, iii.
- South Hetton Coal Co., Limited, v. Haswell Coal & Co., Limited (78 L.T. 8), 78, i.
- Spooner v. Browning, Todd, and Whiah (77 L.T. 685; 78 L.T. 98), 79, vi.
- Sprange, *in re*; *e. p.* The Official Receiver (77 L.T. 808), 79, ii.
- Stern v. Tegner (L.R. [1898] 1 Q.B. 87), 23, 47, v.
- Stevens, *in re*; Cooke v. Stevens (L.R. [1898] Ch. 162; 77 L.T. 508), 89, ii.
- Stiles, *in the goods of* (L.R. [1898] P. 12; 78 L.T. 82), 89, vii.
- Stokes v. France (L.R. [1898] 1 Ch. 212; 77 L.T. 595), 75, iii.
- Stokes v. Stokes; the Church Missionary Society cited (78 L.T. 50), 89, v.
- Stride v. Martin (77 L.T. 600), 81, i.
- Stuart v. Maskelyne British Typewriter, Limited; *in re* Maskelyne, etc. (L.R. [1898] 1 Ch. 133; 77 L.T. 579), 65, vi.
- Sweeting, *in re* (A Solicitor) (L.R. [1898] 1 Ch. 268; 78 L.T. 6), 86, i.
- TAYLOR v. NEW WINDSOR CORPORATION (L.R. [1898] 1 Q.B. 186; 77 L.T. 585), 70, v.
- Taylor v. Burger (78 L.T. 93), 84, ii.
- Thetford Corporation v. Norfolk County Council (L.R. [1898] 1 Q.B. 141), 23, 48, i.
- Tomlin's Case; *in re* Drinsmead (Thos. Edward & Sons) (L.R. [1898] 1 Ch. 104; 77 L.T. 521), 67, i.
- Tomlinson v. Andrew; *in re* Tomlinson (L.R. [1898] 1 Ch. 232; 78 L.T. 12), 86, v.
- Townend v. Kirkham (L.R. [1898] 1 Q.B. 51), 23, 47, vii.
- Townson v. Townson and Becknall (78 L.T. 54), 72, ii.
- Turner v. Stallibrass (L.R. [1898] 1 Q.B. 56), 23, 48, i.
- VESTRY OF ST. MATTHEW, BETNAL GREEN, v. LONDON SCHOOL BOARD (L.R. [1898] A.C. 190; 77 L.T. 635), 75, i.
- WALKER v. WALKER (77 L.T. 715), 72, i.
- Watson v. Sandie & Hull (L.R. [1898] 1 Q.B. 326; 77 L.T. 528), 82, iii.
- Western, *in the goods of* (78 L.T. 49), 89, iv.
- West London Syndicate v. Inland Revenue Commissioners (L.R. [1898] 1 Q.B. 226; 77 L.T. 797), 81, iv.
- White, *re*; Pennell v. Franklin (L.R. [1898] 1 Ch. 297; 77 L.T. 793), 86, ii.
- White, *re*; *e. p.* Ward and Afford (78 L.T. 25), 62, ii.
- Wilcock, *in re*; Kay v. Dewhurst (L.R. [1898] 1 Ch. 95; 77 L.T. 679), 88, iii.
- Williams v. Pinckney (77 L.T. 700), 69, v.
- Wood v. Widnes Corporation (L.R. [1898] 1 Q.B. 463; 77 L.T. 779), 73, vi.
- Wyatt, *in the goods of* (L.R. [1898] P. 15; 78 L.T. 80), 78, iii.
- Wynne v. Wynne (L.R. [1898] P. 18), 71, iv.

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## I.—THE PUNISHMENT OF JUVENILE OFFENDERS.

THE Committee of the Howard Association have recently issued a report based on an inquiry instituted by them in relation to the treatment of juvenile offenders, a subject which has of late attracted a large measure of public attention. This is not, however, a novel question; its importance was recognised many years ago: "It was," says the author of an excellent article in the last volume of "Criminal Statistics" presented to Parliament, "one of the questions on which the inspectors appointed under the Prisons Act of 1835 were specially instructed to report to the Secretary of State; they gave prominence to it in their first report, and in other reports of the time expression is frequently given to a growing sentiment that the solemn and long protracted formalities of a criminal trial were unsuited for children, and should be replaced by more summary methods." Though deferred for some years after the publication of these reports, a great advance in the right direction was undoubtedly made by the recognition on the part of the State of the value of the educational method of treatment in connection with the establishment of certified reformatory and industrial institutions; but it is only within the last decade that an attempted solution of the complex problems abounding in this branch of criminology has been undertaken in a manner likely to lead to any really satisfactory result. This change of attitude is

largely due to the labours of that patient investigator and able writer Dr. W. Douglas Morrison, who, as Lombroso remarks, was the first man in England to approach the consideration of these questions in a truly scientific spirit.

The enquiry of the Committee was naturally directed in the first instance to the existing methods adopted for the repression of juvenile crime; and their report (p. 6) refers in terms of satisfaction to the "comparative abandonment of child imprisonment," a phrase well justified no doubt by the facts disclosed in the published returns. Of the prisoners committed to gaol in 1834 for larceny and other offences against property without violence more than 13 per cent. were under 16 years of age; and, according to a statement in the "Criminal Statistics," extracted from the evidence given before a Select Committee of the House of Lords in 1835, there were on the 31st May in that year no less than 258 lads, of ages ranging, with few exceptions, from 10 to 16, on the hulk *Euryalus* awaiting transportation. Twenty-one of these lads had been there for more than two years. Now, although the recent returns do not admit of an exact comparison with the figures of 60 years ago, yet an instructive inference may be drawn by contrasting those figures with the returns for 1896, from which we find that of the aggregate number of prisoners convicted and received in prison during that year, only slightly over 1 per cent. were under 16 years of age. It must be admitted, however, that the actual figures relating to child imprisonment still present a somewhat formidable aspect; for, in the year 1896, the number of children between 12 and 16 convicted and received in prison was 1438, whilst there were condemned and cast into gaol no less than 60 "criminals" *under twelve years of age*. But, to avoid misconception, it should, perhaps, be pointed out that the last cited figure hardly seems to represent the general feeling of the community in

regard to the incarceration of very young children; for of this total of 60 youthful prisoners, 23 appear to have been committed to a single gaol (Cardiff), whilst not one child under 12 was imprisoned in any of the 10 prisons situate amidst the great industrial centres of the North of England—indeed, out of the 56 local prisons in this country, only 5 (Cardiff, Birmingham, Cambridge, Exeter and Lewes) received more than 3 of such “prisoners” during the year 1896.

We suppose it would be generally conceded that this marked diminution in the number of “child” prisoners cannot fairly be ascribed to any actual decrease in juvenile delinquency, but is, in the main, attributable to the strong and growing indisposition on the part of judges and magistrates to have recourse to imprisonment in such cases. In truth, there is clear evidence of such an indisposition in the replies received by the Committee of the Howard Association from a large number of experienced chairmen of Quarter and Petty Sessions and other magistrates. As the report states: “The condemnation of child imprisonment is almost universal. Nearly all the writers express their dislike of it, and report their personal disuse of it, as far as possible.” And, at the same time, it is the recorded opinion of the most competent authorities that the decrease in the juvenile population in our English prisons does not imply any real diminution in the amount of youthful criminality (see Chap. I. of Morrison’s “Juvenile Offenders” *passim*).

This view, too, is abundantly justified by the most recent statistics to which we have access. Going back 60 years, we find that, in the year 1836, of the persons *brought to trial* for indictable offences 11·55 per cent. were under 16 years of age. Here again the figures do not afford an exact comparison, but it is amply sufficient for our purpose to point to the fact that of the persons

*convicted* of indictable offences in 1896 no less than 21·13 per cent. were under the age of 16. The disparity may, no doubt, be to some extent accounted for, as suggested in the introduction to the recently issued criminal statistics, by the increased facilities for the prosecution of young persons, and by the substitution of action by the police for action by the individual. But, explain the figures as we may, they cannot be said to disclose any ground for the adoption of an optimistic view as to the success of the methods hitherto employed in the treatment of juvenile offenders.

As numbers bear witness, it is daily impressed upon the mind of the magistrate that, in many cases, short terms of imprisonment punish and degrade but do not correct or deter; indeed, as the Prison Committee put it, imprisonment in the case of less hardened criminals, and especially of first offenders, produces a deteriorating effect. And it is now becoming more generally recognised that even penal servitude or a long term of imprisonment—with all the physical discomfort and mental torture induced by our present system of starvation diet and cellular confinement—does not constitute an unfailing specific, applicable (as some would seem to suppose) alike to the hardened and brutalised “old offender” and to the man of sensitive and refined mind, paying the penalty exacted for obedience to some momentary and isolated criminal impulse. These statements may be readily illustrated by an appeal to figures, which are in themselves interesting and significant. In the year 1836, more than *one out of every four* convictions for an indictable offence resulted in the penalty of death or of transportation *for at least seven years*. In 1896, *not one out of fifty* such convictions resulted in a sentence of penal servitude at all, and not one in two-hundred-and-fifty of the persons convicted was sentenced to so long a term as seven years. Again, in 1896, of the persons convicted

of an indictable offence *one in every five* was visited with a *pecuniary* penalty only ; whilst, in 1836, barely *one in fifty* escaped with this milder form of punishment.

Now, whether this revolt against the present system of imprisonment be based on reasonable grounds or not, those magistrates—and they are many—who regard the system as in no way calculated to secure the “minimum of punishment,” with the “maximum of determent,” are not likely, under ordinary circumstances, to have recourse to it in the case of offending children. What, then, is to be the substitute for imprisonment ?

That is the real question raised by the enquiry of the Howard Association. There seems to be a general consensus of magisterial opinion in favour of legislation enabling the infliction of *whipping* in respect of the commission of crimes by juveniles. At present the power of justices in petty sessions is limited to the ordering of a few strokes with the birch rod in case the offender is a boy under 14 years of age, who has committed such an *indictable* offence as may be summarily dealt with. One result of this strange state of things (as has been often pointed out) is that if a boy of 13 gets over an orchard wall and picks up an apple from the ground intending to steal it, he may be ordered to be whipped ; if, on the other hand, he climbs the tree and fills his pocket with fruit which he has gathered from the boughs, no such punishment can be awarded. But, quite apart from the consideration of such absurd anomalies as that to which we have just referred, it is manifest from the replies received by the Committee of the Howard Association that there is a firm and general belief in the desirability of giving magistrates a discretion to employ corporal punishment in the case of youthful offenders convicted of crime. It may be added that some suggest—and reasonably—that the justices should be empowered to take this course without the necessity of recording a conviction against the accused



if the whipping alone should appear to be a sufficient punishment. It is a somewhat curious fact that there are very few civilised countries whose penal codes recognise corporal chastisement as a legitimate form of punishment (Morrison's "Juvenile Offenders," p. 212); yet, although there will, no doubt, be considerable difference of view as to the age limit and as to the precise character of the correction and the mode of its administration, there is every indication that public opinion, in this country at any rate, runs strongly in favour of this most desirable extension of the powers of punishment. Indeed, many would be prepared to accept as they stand the excellent recommendations of Sir Charles Cameron's Scotch Committee, not only as to the advisability of whipping, but also as to the details attendant upon this contemplated enlargement of the magistrate's discretion.

The alternative to corporal punishment is the infliction of a *fine*: an instrument of correction which breaks in the hand the moment one seeks to apply it. The imposition of a money penalty is, of course, occasionally effective by its operation on the parents who have to pay it, and who are thus induced to exercise closer surveillance over the child; and, indeed, several experienced magistrates (including Mr. de Rutzen) strongly advocate the enactment of statutory provisions enabling a fine to be imposed *directly* upon the parent. But, whether this be desirable or no, it is lamentable to reflect that a peccadillo which the Court declares may be adequately expiated by the payment of a few shillings should result in the little "criminal" making his first acquaintance with gaol owing to the inability or unwillingness of the parents to discharge the fine. "Cases are frequently coming under one's personal observation of men and women who attribute their descent to a life of habitual crime to the fact that their fathers or mothers were unable to pay the fine arising out of their conviction

for a first offence. . . . As a general rule imprisonment, no matter how mild it is made, is a demoralising experience." ("Juvenile Offenders," p. 200.)

These considerations, however, only touch the fringe of the subject; for, although the punishment of whipping, or by way of fine, or even a simple admonition, may in many cases have a most salutary effect—possibly operating as a complete deterrent—it must be remembered that such treatment is useless when once the commission of crime has become *habitual*. The malignant growth is then far too deep-seated to be removed by the application of any mere superficial remedy. It is not sufficient in such cases to rely simply on the restraining influence of fear; we must now apply some educational, some social method of treatment, otherwise it will soon be found that the continued repetition of trivial offences has culminated in the commission of some greater crime. We have now reached a stage when, as Dr. Morrison has well said, "unless punishment is accompanied by an amelioration of the individual or social conditions out of which the offence has sprung, the offence will be repeated."

What, then, are the requirements of the magistrate in order that this method of treatment may be effectively applied?

In the first place, he must, so far as possible, be made acquainted with every fact that can be ascertained as to the history and antecedents of the accused, his proclivities, his mode of life, and, in particular, his home surroundings. If this information be not forthcoming, the result of the intended correction is the merest haphazard. Such information is often supplied through the officials of the School Board, to whom (at any rate in the busy centres) justices are so largely indebted for most valuable assistance in their attempt to repress crime in the young. So, too, aid in obtaining this information is frequently afforded by the Police Court Missionary; that is to say, in the few Courts

where, through the charity of private individuals, such a functionary is fortunately stationed. But, if the State is prepared to make any serious attempt to deal with this subject, every magistrate should have the right to require such information to be supplied to him at the public expense. It must not be left to voluntary effort, which is, of course, partial and spasmodic. The police, it is true, may be able to inform the Court whether the accused is a "First Offender," that is, whether any previous conviction is recorded against him; but such a test is often not merely valueless, but even highly misleading, for with a perfectly clean sheet he might nevertheless, in some instances, be fairly classed as a habitual offender.

Pending these necessary inquiries (as well as during the time which elapses between apprehension and trial), it is in many cases essential that a proper and sufficient place of detention should be provided other than the prison or the police cell. In the Kensington Union, we believe, and perhaps in some others, special accommodation, with special arrangements as to separation and supervision, is secured for these child inmates. The provision of such accommodation should, we think, be made obligatory upon the Guardians, and power should be conferred authorising the detention of all young persons under 18 years of age in these quarters, whether before or after trial, until the final place of detention can be determined.

In the next place, if it is deemed desirable to subject the offender to the influences of industrial training, there must, of course, be some corrective institution in which the magistrate may cause him to be detained. Up to the present time the Legislature has provided no such place of detention; for, although the Court may *commit* to the Reformatory or Industrial School, there is no power to *compel* reception into such an institution. The child may be, and in practice is, refused admission if he should chance to

be suffering from some chronic ailment or to be afflicted with lameness, or other physical weakness or defect. Such malady or deformity may no doubt unfit him for the particular forms of industrial training in vogue at the school to which it is proposed to commit him; but he may, notwithstanding, be of a disposition peculiarly likely to yield to the influences of reformative treatment. It does not appear that any return is furnished shewing the number of children committed to Industrial Schools but refused admission by the managers on these grounds, although it is an undoubted fact that such cases do occur, and it would be useful to have some record of them.

Moreover, as matters stand at the present day, if the young offender chances to be over 16 years of age, he or she cannot be even *committed* to a Reformatory or Industrial School. Under the preposterous restrictions imposed by the Legislature, a boy or a girl over 16 must be treated as "an adult," presumably unfit for any treatment not directly, and indeed solely, of a punitive character.

Let us take the case of a boy between 16 and 17 years of age convicted of "sleeping out" in a destitute condition—and this, be it remembered, is not an exceptional case; there were 762 young persons under 21 convicted of this offence during the year 1896. We will suppose the boy to be an orphan, or, as perhaps more frequently occurs, living with idle, dissolute, or criminal parents. In all probability, the lad was born with defective moral instincts, has been reared amidst scenes of crime and misery, is ill-clad, underfed, weak in body, feeble in mind, without skill or knowledge of any trade or craft. What treatment does the law prescribe? Three months solitary confinement as a "rogue and vagabond!"

It seems impossible to picture a more pitiful object than the accused. Yet, after his term of exposure to the deadening influences of the prison cell, after a few weeks'

experience of the meagre miserable prison fare, the poor wretch will be turned adrift to "earn an honest living," his weak mind still weaker, his feeble body still feebler than before. Is it fair to treat such an one as though the ranks of labour were really open to him? He is absolutely unequal to the performance of the rough manual work, which is all that he could, by the greatest good fortune, hope to secure. The only other remedy suggested by the Legislature is a fine not exceeding £25; and, according to the latest returns, it would seem that in the year 1896 no less than 582 persons convicted of sleeping out without "any visible means of subsistence" were actually mulcted in a pecuniary penalty, though we have, unfortunately, no record which would enable us to estimate the efficacy of this somewhat singular mode of treatment.

Surely society can do something more to discharge the plain duty which is owing to such an outcast, even if to the offence of vagrancy he has added the crime of theft. It is the opinion of many experienced men that a determined endeavour ought to be made, by means of an extension of the Reformatory system, to train him to habits of industry and fit him for competition in the market of labour. Instances daily occur in which the magistrate, availing himself of the services of the Police Court Missionary (when charitable men have placed one at his disposal), procures employment for such an offender on board a merchant vessel, or in some neighbouring works, or wherever opportunity may offer. Efforts of this kind to reclaim rather than to punish are often attended with most satisfactory results; and it is to be hoped that the establishment of a few comparatively small institutions for the reformation of offenders under (say) 21 years of age, somewhat on the lines of the Penal Institutions existing in certain of the American States, will not be long postponed. Such institutions to be effective must, of course, be erected

and maintained at the public expense as in the case of prisons, and placed under the control of the Education or some other Department of State.

The recommendations received in response to the enquiry of the Howard Association are thus summarised:—Power to order the infliction of whipping; modifications in the law affecting existing Reformatories and Industrial Schools; amendment of the Education Acts in relation to the children of vagrants; re-introduction of the measure of 1891 to enforce parental responsibility; power to give indeterminate sentences; appointment of probation officers to supplement the operation of the First Offenders Act; legislation for the discouragement of intemperance. Excellent as many of these suggestions are, we are convinced that it is necessary to apply a remedy of a much wider and more drastic character—in short, the adoption of a comprehensive scheme for the erection and maintenance of institutions of the reformatory type with well considered provisions as to the training of the inmates in industrial and social habits and their ultimate release on licence.

CHARLES M. ATKINSON.

## II.—PIRACY IN TRADE NAMES AND DESCRIPTIONS.

ONE man never succeeds pre-eminently in any sort of business without rousing the natural envy and jealousy of all those who are engaged in similar work, or without stimulating in them the equally natural desire to divert that business to their own houses. So far this is only the law of competition. But where men cannot achieve a trade victory over their rivals by fair means,

they too often attempt to compass the same end *by foul*. Now of all the mean and despicable contrivances by which men seek to acquire the profits which in all fairness should belong to another, there is none which all right-feeling persons will condemn more strongly than that which we are about to discuss.

The contrivance in question is not new: it is not elaborate; it is on the contrary simple and obvious in the extreme; and it has been exposed and defeated over and over again. And yet it still flourishes: it still deceives; and it is put in practice every day. Here is the recipe for it. You persuade the public that your wares actually *are the wares*, for which your rival has made such a good name in the market. But you must be very careful as to how and in what shape you advance this falsehood. Of course you must not simply assert that which you wish them to believe. You must not without some colour use the name of another, nor his exact description of an article, nor a precise copy of the label which he has been wont to attach to it. You must sail close to the wind. You must bring your article under the description which your rival has given to his, so that you can swear by the card. You must imitate, if possible, in so indirect a fashion that little or no handle may be given to lay hold upon; that is to say, you must imitate in such fashion that there is nothing which any man can fasten on and say:—"There, you have imitated me; you are deceiving the public." It must seem to have been by an innocent mischance that your goods have become confused with those of your neighbour.

Business men will have no need to ask for examples of this contrivance. It constitutes a danger of which all honest traders are only too well aware, and against which they are continually endeavouring to protect themselves. Lawyers will find recent examples of it in the facts reported in the following cases: viz., *In re Thomas Brinsmead and*

*Son*, [1897] 1 Ch. 45 and 406; *Powell v. The Birmingham Vinegar Brewery Company*, [1897] A.C. 710, 66 L.J. Ch. 763, 76 L.T. N.S. 792; *Saxlehner v. The Apollinaris Company, Limited*, [1897] 1 Ch. 893, 66 L.J. Ch. 533, 76 L.T. N.S. 617; *F. Pinet et Cie. v. Maison Pinet, Limited*, 77 L.T. N.S. 322 and 613; and *Lever Brothers v. Beddingfield* (the *Times* for 10th June, 1898). We are not referring to these cases for the law of the matter, but merely as examples in fact of the contrivance which we have been describing. It must, however, be observed in regard to one of these cases that no fraud was proved against the Apollinaris Company, Limited; but Mr. Justice Kekewich thought that the name on the Company's label placed "an instrument of deception" in the hands of the retail dealer. It may perhaps be remembered, on the other hand, that the *Brinsmead case*, which was that of a great fraud, has recently found its way into the criminal courts. See *Reg. v. Thomas Edward Brinsmead and Others* in the Central Criminal Court Sessions Papers, Vol. cxxviii., page 577.

The criminal law upon the subject is quite clear. By Statute 24 & 25 Vict., cap. 96, sect. 88: "Whosoever shall by any false pretence obtain from any other person any chattel, money or valuable security, with intent to defraud, shall be guilty of a misdemeanour": and any person who represents that his wares *are the* well-known wares of some one else, when he knows they are not, and thereby obtains money from any other person would indubitably fall within this section. But it would be necessary to shew some definite person thereby defrauded: and, moreover, a much stronger and clearer case would of course be needed for a prosecution on these lines than such a case as would warrant merely civil proceedings.

The Merchandise Marks Act, 1887, is also of great importance in this connection, providing as it does a summary remedy, besides a remedy on indictment, by way



of imprisonment or fine in the case of every person who (*inter alia*) "applies any false trade description to goods." See Statute 50 & 51 Vict., cap. 28, sect. 2, sub-sect. 1 (*d*) and sub-sect. 3. But, for reasons already indicated, the civil remedy at common law remains that which is of chief practical value. And in what follows it is of this alone that we shall speak.

The important judicial decisions relating to piracy in trade names and descriptions during the last forty or fifty years form a peculiarly interesting chapter in the history of the law of England; and afford characteristic illustrations of the development of the common law. We propose shortly to review these decisions from the case of *Burgess v. Burgess*, which was heard by Lord Justices Knight-Bruce and Turner in the old Court of Chancery, to *Reddaway and Company, Limited, v. Banham and Company, Limited*, the leading case recently decided in the House of Lords.

In 1853 then—for that is the date of the first case which we shall mention—the fight was between a father and a son, both of whom naturally had the same surname, Burgess to wit. Now Burgess *père* had for many years exclusively sold an article under the name of Burgess's "Essence of Anchovies," and he sought to restrain Burgess *filis* from selling a similar article under that name. But since no fraud was proved, the Court refused to give any such injunction. "All the Queen's subjects," said Lord Justice Knight-Bruce, "have a right, if they will, to manufacture pickles and sauces; and not the less that their fathers have done so before them. All the Queen's subjects have a right to sell these articles in their own names, and not the less so that they bear the same names as their fathers!" This epigrammatic judgment was characteristic of the learned Lord Justice, who uttered it; how far it was accurate we shall presently examine. Meanwhile, it is important to observe the substantial reason for the decision,

which was the fact that *no fraud was proved*. *Burgess v. Burgess* (22 L.J. Ch. 679).

In 1862, the next case of importance arose. One Young, who first made what he called "Paraffine Oil," and made it from bituminous coals, sought to prevent the use of the term "Paraffine Oil" by one Macrae, who made his oil by distilling petroleum. Now Young admitted that "Paraffine" was not a new name invented by him, for Reichenbach, the well-known German chemist, had discovered the substance called "Paraffine," and called it by that name in 1830. But the two words, "Paraffine Oil," constituted, he said, a new name. Vice-Chancellor Page Wood (afterwards Lord Hatherley) said: "If the plaintiff had invented a fanciful and ridiculous name—and the more ridiculous it is, the better for his purpose—and had used it for eight or ten years in his trade, the Court would take care that no one should use his absurd name." Unfortunately for Young, there was nothing "absurd" enough in the name of "Paraffine Oil" to pull him through, and the injunction was refused. Hence, we suppose, arise the numerous very "absurd" names which at present obtain for all sorts of commodities in English trade. They are legal precautions suggested by this case. *Young v. Macrae* (9 Jur. N.S. 322).

In 1872 came the case of "Lieutenant James' Horse-Blister," the decision in which subsequently became the subject of much legal argument, with the result that its authority has suffered not a little. One Robert James, a lieutenant in the Army, had discovered, some years ago, the secret of the chemical preparation known as "Lieutenant James' Horse-Blister." He had never obtained a patent for it; and he had died in 1865. The benefit of the invention was vested (by certain deeds which had been executed in the discoverer's lifetime) in Robert Swan James and James James as trustees for the benefit of his family. Robert Joseph James, son of the said

Robert Swan James, having become acquainted with the secret, manufactured an ointment which he sold and advertised as "Lieutenant James' Horse-Blister." His advertisement contained (*inter alia*) the following words:—"None is genuine without a trade mark—a horse's head on the top of each pot and the signature Robert James." Lord Romilly, Master of the Rolls, said that Robert Joseph James was entitled to make and sell the compound, provided that he did not lead the public to suppose that his preparation was the manufacture of the successors in business of the original discoverer, but that he must not assert that his was the only genuine article, nor suggest that the article manufactured by the successors of the discoverer was spurious. *James v. James* (41 L.J. Ch. 353).

Later in the same year—1872—the celebrated "Glenfield Starch" case was decided by the House of Lords. It was proved that Fulton & Co. had formerly carried on the business of starch makers at Glenfield, that they had long manufactured a particular starch at Glenfield, which they called "Glenfield Double Refined Powder Starch," and that in 1847 the plaintiff Wotherspoon had purchased this business from them. The defendants, Currie & Co., were manufacturers of starch at Paisley; but in 1868 they acquired a piece of land at Glenfield, and began to sell a certain starch under the name of "Glenfield Starch." There was nothing to give particular celebrity to the name of Glenfield, so connected with a starch manufactory, beyond the fact that Wotherspoon's manufacture which was produced there had a very large sale in the market; and the House of Lords believed that Currie & Co. had bought the land at Glenfield merely that they might be able to trade with that name. They therefore reversed the decision of Lord Justice James, which was in favour of the defendants, and restored that of Vice-Chancellor Malins, by which the Paisley firm were

restrained from further use of the name "Glenfield Starch" as a name for their manufacture—a conclusion which must have been gratifying to all lovers of justice. *Wotherspoon v. Currie* (42 L.J. Ch. 130).

In 1876 an important case about filters arose, the facts of which were as follows:—G. Cheavin, making filters of the same description as those for which his late father, S. Cheavin, had held a patent now expired, labelled them with the words "G. Cheavin's Improved Patent Gold Medal Self-cleaning Rapid Water Filters," surmounted by a medallion of the Royal Arms. The Court of Appeal discharged the injunction of Vice-Chancellor Bacon restraining Walker, Brightman & Co. from manufacturing filters labelled "S. Cheavin's Patent Prize Medal Self-cleaning Rapid Water Filters, Improved and Manufactured by Walker & Co."; nor would they insist upon their removing the word "Cheavin" from their label; and this for three reasons. Firstly, because the label was not a trade-mark, but only a description of the article as made according to S. Cheavin's patent, which was now common to all the public. Secondly, because nothing in the defendants' label was calculated to mislead the public by a fraudulent imitation of the plaintiff's label. Thirdly, because the plaintiff's label, coupled with the medallion above-mentioned, constituted a false representation that the patent was still subsisting, and disentitled the plaintiff to relief by injunction. We consider that the third reason is the best. He who comes to Equity must come with clean hands. *Cheavin v. Walker* (46 L.J. Ch. 686).

In 1880 "Thorley's Food for Cattle" became the subject matter of a similar dispute under the following circumstances. Joseph Thorley, down to his death in 1876, had been the only person who manufactured "Thorley's Food for Cattle." After his decease Massam, his executor, continued the business. In 1877 J. W. Thorley, the brother

of Joseph, divulged the secret of the recipe, which he knew from having been in his late brother's employ, to a limited company called "Thorley's Cattle Food Company," in which he took a shilling share. This company now sold the article which they made by the help of that recipe under the name of "Thorley's Food for Cattle." Vice-Chancellor Malins refused to interfere; but the Court of Appeal held that the company were not at liberty to use this name unless they took such precautions as would prevent purchasers from supposing that the article sold by them was manufactured at the original establishment of Thorley. *Massam v. Thorley's Cattle Food Company*" (42 L.T. N.S. 851). Lord Justice James referred in his judgment to the case of *James v. James (ubi supra)*, and pointed out a possible distinction between that case and the present. "It is possible," said he, "that the Master of the Rolls may have thought that 'Lieutenant James' Horse-Blister' was merely an indication that it was made according to the lieutenant's recipe." But he added "*in which case I should not be able to concur.*" He says further on: "I do not think that there is any substantial difference between the two cases." The result therefore is that *James v. James* may be regarded as practically overruled.

In 1882 the House of Lords was again called upon to decide a similar question. The Singer Manufacturing Company, who had for a long time used the word "Singer" as a designation of all the sewing machines manufactured by them, with specific words to distinguish different kinds, had brought an action against Loog, the agent in England of the Sewing Machine Manufacturing Company of Berlin. That company described the machines which they made "on the Singer principle" as "Singer Machines," with additional words to explain their Berlin manufacture. The plaintiffs had succeeded in obtaining an injunction from Vice-Chancellor Bacon, notwithstanding the dis-

couragement which that learned lawyer had received from the Court of Appeal in the filter case. The Court of Appeal once more reversed his decision, and the supreme tribunal refused to interfere. "The defendants," they said, "had a right to do as they did, provided they did so in such a way as to avoid any reasonable possibility of misunderstanding." *The Singer Manufacturing Company v. Loog* (8 App. Cas. 15; 49 L.T. N.S. 484).

In 1889, Mr. Justice North heard the complaint of Thomas Turton and Sons, steel manufacturers, of the Sheaf Works, Sheffield, who sought to restrain John Turton and his two sons, steel manufacturers, of the Vulcan Works, Sheffield, from calling themselves "Turton and Sons," which they claimed had long been the business name of the plaintiff firm. The learned judge granted an injunction as prayed; but the Court of Appeal held that, although there was a probability that the public would occasionally be misled by the similarity of the names, still, as there was no fraud on the part of the defendants, no injunction should have been granted against them. *Turton v. Turton* (42 Ch. D. 128). Notice the particular ground upon which this decision, like that of *Burgess v. Burgess* (*ubi supra*) rests, viz., the fact that *no fraud was proved*.

In 1891 came the "Stone Ale" case. Here the plaintiffs and their predecessors had, for a hundred years, carried on a brewery at Stone, and their ale had become well-known as "Stone Ale." In 1888 the defendant built a brewery at Stone, and immediately began to call his ale "Stone Ale." It was found that he intended to use the term in connection with liquor of his own manufacture with a view of leading to the belief that the ales which he sold were those which had become well-known in the market, and thus obtaining the advantage of the reputation which the plaintiffs' ales had won. The defendant was restrained by Mr. (now Lord) Justice Chitty by perpetual injunction from using this name

"Stone Ale." The Court of Appeal affirmed this perpetual injunction, and the House of Lords refused to interfere. *Montgomery v. Thompson*, [1891] A.C. 217.

At last, in 1896, the whole matter was satisfactorily thrashed out before the House of Lords in the great case which has now established what is the true principle of law relating to this subject. In spite of all the cases which had been decided, the dodge was not dead yet. A man called Banham thought that he would try it once more. This ingenious person had been in the employment of a manufacturer of belting of the name of Reddaway up till the year 1889. Reddaway was flourishing, and he called the commodity by which he was making his fortune, "Camel-hair Belting" to distinguish it from the belting of other manufacturers. "Now," said Banham in effect, "he is in my power; he has not given his commodity an 'absurd' name. 'Camel-hair Belting' is a mere elemental description of the commodity which he sells. I can use that name as well as he, and the public will buy my belting thinking that it is his." So, having started the inevitable company, he began to make his belting and to endeavour to pass it off as that of the plaintiffs. That this was his endeavour the jury expressly found at the trial before Mr. (now Lord) Justice Henn-Collins, who gave judgment accordingly in the plaintiffs' favour. The Court of Appeal reversed this decision, holding that a man could not have any right to the exclusive use of a name which was only the mere elemental description of an article. Lord Esher *more suo* ridiculed the arguments of the plaintiffs to the contrary by asking whether if A. B.'s "iron shovels" became so well known upon the market that until C. D. started his rival establishment for their manufacture, "iron shovels" came to mean A. B.'s "iron shovels," C. D. could be restrained from selling his commodity, under the name of "iron shovels." The House of Lords, however, restored the

decision of Mr. (now Lord) Justice Henn-Collins. This conclusion was eminently desirable; and the grounds of law upon which it stands are stated in two sentences for which Lords Halsbury and Herschell are respectively responsible in language so convincing and clear that the would-be "cheat and swear-by-the-card" men of business seem at length to have their last support taken from beneath them. The Lord Chancellor said:—"I believe the principle of law may be very plainly stated: and it is that nobody has any right to represent his goods as the goods of somebody else." And Lord Herschell added:—"If the defendants are entitled to lead purchasers to believe that they are getting the plaintiffs' manufacture, when they are not, and thus to cheat the plaintiffs of some of their legitimate trade, I should regret that the law was powerless to enforce the most elementary principles of commercial morality." *Reddaway and Company, Limited, v. Banham and Company, Limited*, [1896] A.C. 199.

We rejoice that the law is not so powerless: we rejoice that the "iron shovel" argument did not prevail; even although the rejection of it induces the somewhat startling reflection that circumstances may be imagined in which it might possibly be illegal to call a spade a spade!

ERNEST A. JELF.

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### III.—THE PRISONS BILL.

**L**EGISLATION on prison discipline is again called for, and there is an impression abroad that our system, since the transference of prisons to Government control, has become too rigid, and inelastic in its adaptation to cases.

Ideas of penal discipline are constantly tending to relaxation from severity, partly as civilization softens



sentiment and partly as the "rights of man" advance in independent assertion. The world's whole history of government development from its Oriental cradle of paternal autocracy to the widest expansion of republican freedom, has shewn naturally this tendency. From the dicta of Solomon to Lord Beaconsfield's lament "that crime was vindicating its own impunity" the decline of penal discipline has accompanied the course of legislation. But the decline has not been steady. By fits and starts there come excesses of alternate severity and leniency. For instance, a period of brutal floggings in our army has led to nearly total disuse of a species of punishment of proved and sole suitability to certain classes of crimes in its proper application.

Criminal law, certainly, demands the greatest caution in alteration, both on political and moral grounds. It is creditable to the legislature to err on the side of leniency, as the legislators are chiefly of a class which is least tempted to incur its penalties. But there are principles of law which neither carelessness, nor good nature, can cause to be overlooked without the destruction of the law itself.

Some are now arguing that crime is a matter of epoch, and questioning where the responsibility for crime rests, whether on the criminal or his circumstances. This shews simple ignorance of the laws in discussion. Human laws are not of universal application as the moral law, but prescriptive of civil conduct in a State, only not repugnant to the moral law. Human judgment, also, is of limited scope, as it cannot deal with motives, but with facts in evidence.

The causes of, or ultimate responsibility for, crime is a consideration for philanthropic and remedial legislation, but not for the administration of statute law. Parents may be to blame for their sons' crimes, society itself may cause

infraction of the guards it has set up, sanitary neglect, want of education, faulty or unintelligible laws may engender crime against the State; but, all the while, the fact of a crime occurring must be met with punishment as closely and immediately connected with it as possible, or anarchy must result.

Criminal law is not a psychological problem, discriminating temperament or physical or moral motives, but an imposition of fences against its own violation.

True, penal reform has had two difficulties to contend with: apathy unawakened by direct self-interest; and false theories of punishment.

Such men as Romilly found it difficult to rescue boy-stealers of 5s. from a shop from being hung, with a stone to their legs to make them heavy enough; and after long debates, to get midnight votes from diners-out, who told him "they were for hanging 'em all."

The false theorists about punishment are now, on the contrary, for treating it simply as education, not as correction. They confuse medicine with dietary. Such doctoring would hardly be accepted for the body.

Punishment is an incident to education, and in its process should, as much as possible, aid it. But its business is to check the recurrence of a specific offence against it. Education is a much larger process, ill-suited to penal treatment, which cannot be made attractive, as education should be, without losing its special effect; and which, to be effective, should be as short and close to the crime it is to check as possible. To make punishment of long duration for educational purpose is one of the grossest mistakes of present theories. Prisons used as schools, and schools as prisons, are the reciprocal blunders of present penal and reformatory legislation. Criminals are badly treated as pupils, and pupils are badly educated as criminals.

Relaxed notions of penal discipline have reduced the resources of punishment almost to exhaustion. Short of capital punishment, imprisonment almost alone remains. Corporal chastisement, while still recording its special efficacy in a few instances of suitable application, is a remedy well nigh sacrificed to senseless sentiment.

Fines cannot be generally applicable, and the only provision in the Bill under consideration relating to fines is a proportionate release from prison on part payment, but it is not said whence such part payments can come. There is nothing in the Rules on the subject.

Imprisonment, therefore, is the main topic in discussing penal discipline. Its primary requisite is that it be made a deterrent from the repetition of the crime. Its secondary requisite is that its process should be to the utmost conducive to education; to health of body as well as mind.

The number of re-commitments now replenishing gaols betrays corrective inefficiency in the present system, and this sign of inefficiency is shewn to have increased during the 20 years of Government prison control, from which the inference may be drawn, that with habitual criminals the treatment acts as a sustained inducement to repetition of crime, instead of a check to the criminal propensity.

The late Departmental Report confesses that upon our boasted advance of civilization the mass of habitual criminals is a growing stain. The Home Secretary stated, in debate, that 50 per cent. of our prison population were apparently incorrigible, yet he looks with hope to such improvements as are already being introduced in the way of discriminating the "Star class," and the greater use by magistrates of the "First Offenders Act." But even allowing greater discretion to the Secretary of State to make Rules regulating the mode in which sentences shall be carried out, and the classification and differential treatment

of prisoners, there will always be extreme difficulty in adapting this almost sole remaining manner of punishment to the variety of cases coming under it, maintaining adequate severity for some, and mitigating so far as possible the requisite amount of it to others.

The main difficulty in the problem of imprisonment lies between the principles of association and segregation of prisoners. The evils of both are manifest—the mutual contamination of the one, and the mental strain of the other. There are advantages also belonging to each mode of treatment. A careful association may have humanizing influence, and segregation gives opportunities for the exercise of individual kindness and advice.

The right solution of the problem is surely compromise between the two principles. I recollect years of anxious pains taken to obtain the abolition of associated imprisonment, and to get an entire provision of new buildings for substituting the cellular system. There is fear now of too great departure from one extreme to the other. The separate system has never been a solitary system. Constant attention of officials, some association in work, and a good supply of books, have relieved the strain of solitude. The Bill goes as far as is safe for penal efficacy, in proposing further mitigation by discretionary rules, and new classification. The Home Secretary in debate used almost dangerous phraseology in distinguishing “real criminals” from those “not really criminal” for different treatment in such matters as dietary, plank beds, &c. There should be as much of the disagreeable in prison life as is compatible with health, and even the least criminal can hardly have life in prison made safely “cheerful” as Mr. O'Connor demands.

The new division of misdemeanants, the discrimination of first-offenders, conditional remissions of sentences, and progressive stages, are mitigations coming up to the very

verge of introducing into punishment, that fatal defect—uncertainty.

For those juvenile criminals whose precocious malice must still be punished in prison, it is wisely proposed to have separate treatment. Others, as far as possible will be whipped, and sent to Reformatories in the true sense, not penal schools stamping all their childhood with criminality, but for education after punishment.

The Bill disclaims all intention of offering a complete new Code, and much is left to be added in the way of concurrent educational provision.

To omit any possible means and opportunities of moral influence compatible with the process of punishment for offences, is as wrong as attempting to make correction an entirely educational undertaking. In all recent reports deficiency and ineffectiveness of prison instruction are lamented, and improvement proposed. It is to be feared, from the Draft Rules issued, that the Government has failed to realise the absurdity of cellular teaching, which the Departmental Report of 1895 condemned as utterly useless, and has not yet organized a complete system of class instruction. The schoolmaster is not named in the new Rules except in one paragraph about juveniles, which it is hoped will be a vanishing class altogether.

The Report of 1895 also condemned the still existing rule by which only prisoners sentenced for more than four months receive any instruction at all! Even three months with a schoolmaster might be of some educational use; but education is now understood only to mean acquisition of science, and not mental and moral training, and the cost is the main consideration, with too little appreciation of the value to be received.

As to religious instruction the chaplain is, by one of the Rules, put in charge of the three Rs. Chaplains are miserably paid, as if any one was good enough to teach

prisoners, who of all men require the wisest and most careful advice, the want of which has mostly caused their crimes. The Bill, however, permits holders of benefices with cure of souls, to undertake these duties, it is supposed that some prisons are too small to justify the expense of a chaplain, or even to engage the interest of such an officer ! This folly is probably a phase of what is called " the religious difficulty."

The increased use and powers of Visiting Committees is the most important improvement proposed. The kindly sympathies of unpaid local co-operation will supply the soul to the rigid body of Government officialism. Visitors know more of the prisoner's circumstances, and, may exercise kindlier influences.

Many a criminal has been reclaimed from evil ways by the first felt sympathy of visitors ; and Discharged Prisoners' Aid Societies have often closed the prison gates for ever against the return of the hopeless.

There is a feature of our prison buildings which is capable of immense, and morally great, improvement. The places used for public worship are of the meanest kind ; certainly unsuggestive of any reverential feeling which might do more to humanize criminals than any other educational influence. In a large circuit of prisons I only found one, at Wormwood Scrubs, that had a decent chapel, and that was due to the accident of an over accumulation of quarried stone at Portland, by which the public are not allowed to recoup themselves of the charge of profitless prisoners. The Governor considers this chapel his chief instrument of good, and says that it is so remarked on by all the most expert visitors, and especially by some American officials who had lately come to report on our Institutions.

Throughout this survey of the Prisons Bill there appears abundant difficulty in the problem of right penal discipline ; the arbitrium of legislature as to what is crime, the

variety of judgments in sentencing, and the differences in mode of execution, added to human incapacity to discern the springs of action, must cause inevitable uncertainty and inequality in the incidence of punishment. Dogmatism is therefore out of place in discussion of the subject. But if general principles are observed, and the true object of punishment is kept in view, as *neither retaliation nor vengeance*, but simply the protection of society from the repetition of crime, the maximum of its possible adaptation to the case may be united with a minimum of allowance of discretionary application. One is glad to hear that this difficult problem is to be referred, for further consideration, to the highest authorities.

Uncertainty is the worst defect in punishments. The provision in the Bill for winning partial remission of sentence is a compromise between the dangers of uncertainty, and the usefulness of the incentive of hope. But laws must strictly define crimes, and assign definite punishment. Certainty is far more important than severity. More uniform and shorter sentences are recommended to increase the efficacy of punishment, and relieve the needless crowding of our gaols.

The increase of education in its true sense outside of prisons, and greater attention to the objects of correction within them, will lead, it is hoped, to a reduction of our criminals, which the improved system now about to be further perfected has so well begun.

NORTON.

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#### IV.—DIVORCE AND JEWISH LAW:\* A STUDY IN COMPARATIVE JURISPRUDENCE.

**"M**ARRIAGES are made in Heaven," the popular proverb of every European language, is only a variant of the more subtle saying of the Rabbi who, in response to the enquiry, "What has God been doing since the work of creation was completed?" answered, "The Holy One has been sitting in Heaven arranging marriages." It may strike many as singular that this strange bit of folk philosophy should find its earliest source in Rabbinical literature, or that it should be recognised there at all; but this is not the only instance in which that little explored store of morals and jurisprudence is misjudged, or condemned, because it is unknown.

There is perhaps no subject on which Jews and their laws are more misunderstood and misrepresented than this of the estimation and status of women; and the Rabbinical regulations about marriage and divorce have long been the butt of the ignorant, as well as the scoff of the prejudiced. It is well, therefore, that this little book by a prominent member of the Philadelphian Bar, should have appeared, and that the work should have been done so capably; for there is henceforth no excuse for the English lay reader, and certainly none for the lawyer, to ignore the striking lessons in historical development, and philosophical discrimination which the Jewish Law of Divorce presents to the impartial student.

Here we shall find anticipated the refined analysis of the marriage contract which Bentham made the basis of the rules laid down by him on this subject in his "Principles of

\* *The Jewish Law of Divorce according to Bible and Talmud.* By David Werner Amram, M.A., LL.B. London: David Nutt, 1898.



the Civil Code"; here the last word of Philosophy on the *rationale* of Divorce, as declared by Herbert Spencer in his "Principles of Sociology," will be shewn to have its counterpart in the learning of the Rabbis; here the inconsistencies of the English, the Scotch, the French, the American and other modern "systems" of marriage law will find a striking contrast in the logical rules which have been ignored in their haphazard and unscientific development.

Jewish Law, in which the fusion of ethics and legislation was carried to an extent which has never been secured by any other system, and in which every act of a man was regarded as an act of religion, escaped from the fluctuation of opinion in modern society between the view of marriage as a merely civil contract, and the contrary belief in it as a sacrament. It thus avoided the chaotic condition into which the marriage and divorce regulations of modern States have been reduced by the conflicting claims of (1) the old Canon Law, as interpreted by the clergy and modified in varying degrees by the principles of the Reformation; (2) the Common Law, as declared by its secular exponents on the judicial bench; and (3) the Statutes of Parliament, reflecting more or less current opinions on the moral and sociological problems involved, as affected by varying historical considerations.

It is only necessary to cite a few instances of rules from the Jewish Law to shew how much there is still to learn from it; and how great must be its value in the study of comparative Jurisprudence on which all improvements in future legislation must be based.

The ravisher may never divorce his victim.\*

Conversely, the woman found guilty of adultery may never marry her paramour.†

\* Deuteronomy xxii., 28 and 29.

† Mishna Sotah v., 1.

Remarriage with a divorced wife after the intervention of a second marriage is forbidden.\*

Childlessness after ten years cohabitation,† and the incurring of a loathsome disease,‡ are valid grounds for divorce, so is joint consent arising from a mutual recognition of incompatibility.§

Turning to another aspect of the question and regarding the subject from the point of view of historical development, we cannot avoid the reflection that if Maine was enabled by his studies in Archaic institutions in the East to produce such epoch making books as his "Ancient Law" and "Village Communities," there lies open to the student of the always living and ever growing Jewish legal system—rooted as it is in the earliest antiquity, but influenced continually, by the changes in political and intellectual environment which accompanied its growth—a field of speculation and enquiry which cannot fail to be productive of lessons of the highest scientific value in modern legal evolution.

To take but one instance—the change from the unqualified power of divorce of the Patriarchal period to its strict limitation to divorce for "just cause," which is now as much the binding rule of the European Jew as it is of all other Western people, there can be nothing more suggestive than to trace the action and reaction of religious principles and political and philosophical considerations which have led in this, under the ever adaptive Rabbinical system, from one extreme to the other of the marriage scale.

(I.) Under the Patriarchal system a man's right to divorce was absolute, as exemplified in the casting out of Hagar at the instance of another wife.

\* Deuteronomy xxiv., 4.

† Talmud Bybli, Jebamoth, 65b.

‡ Mishna Kethuboth, vii., 9.

§ Deuteronomy xxiv., 1.

- (2.) The Mosaic code introduced two specific limitations to this right: (a) in the case of the ravisher, (b) where the husband had falsely charged his wife with ante-nuptial incontinence.\*
- (3.) The Mishna or oral law furnished three further exceptions: (a) where the wife had become insane; † (b) where she had been taken captive and awaited ransom; ‡ (c) in the case of a minor.§
- (4.) Rabbinical jurisprudence introduced further restrictions: (a) where the husband was insane; || (b) if he became a deaf mute; ¶ (c) if the wife, against whom no just cause could be shewn, did not consent.\*\*

The last of these exceptions was the greatest of all, and, being accompanied by a decree of excommunication against anyone who took two wives at the same time, it practically enforced the law of monogamy which is now the rule amongst Western nations. A decree of this kind, promulgated as it was at the beginning of the 11th century, when modern civilization was only feebly emerging from the depths of barbarism, speaks volumes for the independence and liberal tendencies of the Rabbis who constituted the Synhedrion, which gave it legal force and effect.

One exception, and one only, to the rule of monogamy which was thus laid down was allowed, and this, singularly enough, does not find place in the book before us; but it is so striking an exemplification of the Rabbinic method, that it may be as well to cite it.

When a wife became deranged, she could not, as we have seen, be divorced, the logical reason given being that, as

\* Deuteronomy, XXII., 13-19 and 28-29.

† Mishna Jebamoth XIV., 1.

§ *Ibid.*

¶ *Ibid.*

‡ Mishna Kethuboth IV., 9.

|| Mishna Jebamoth XIV., 1.

\*\* Responsa Asheri XLII., 1.

she was not a rational creature, she could not, in the judicial sense, be capable of receiving and understanding the Bill of Divorce, the delivery of which was an essential step in the dissolution of the marriage tie.\* But the hardship of this necessitated some modification of the new rule against the taking of two wives, and therefore it was provided that in such a case a second marriage might be allowed subject to compliance with such onerous conditions that the permission could only be obtained in what was clearly a proper case. The conditions were†—(a) that the sanction of a full hundred Rabbis be obtained; (b) that not more than a third of these hundred be from any one congregation; (c) that each of the congregations selected be in different countries or provinces; (d) that the husband deposit the whole amount of his wife's original and supplementary dowry, and provide security for her due care and maintenance; (e) that he deliver to her a conditional Bill of Divorce, so that in case of her recovery she might be free to re-marry.

The exception thus created is in use to this day, and its value has been attested by so unquestionable an authority as Dr. Schechter, the learned Reader in Talmudic of the University of Cambridge, who has seen it in actual operation in his native country of Roumania.

Nothing more typical could be adduced to shew how the much abused Rabbinical doctors knew how, at the same time, to adopt the most rational views of the law, and to harmonise it with the varying conditions of life that arose from time to time with the changing fortunes of their people.

It is true that for Jews nowadays the Talmudical doctrine, "The law of the Kingdom is the law,"‡ is, in

\* Talmud Babli Jebamoth 113b.

† Rabbi Isserles and Beer Hatev, *Commentaries to Eben Ha'ezer*, I., 10.

‡ Talmud Baba Kama, 113A.

all civil relations, the over-riding rule ; but these regulations have for them more than a scientific or historical interest, because no religious ceremony of marriage can be performed by any Rabbi in cases where they have been contravened, e.g., where a woman has been divorced on process in an ordinary suit, and she seeks to marry the co-respondent in that suit. On the other hand, so great is the anxiety to avoid any possibility of conflict with the State law, that in all Western countries a Bill of Divorce is never granted by the ecclesiastical authorities, until a decree has been obtained through the ordinary legal channels.

Hence the appearance in our Reports of occasional references to the Jewish law, which, in marriage disputes between members of the faith, has been recognised as the basis of English judicial decision. Thus, in the case of *Andreas v. Andreas*,\* it was held that a Jewess married *more Judaico* might obtain decree of restitution of conjugal rights in the Consistorial Court ; in *Goldsmid v. Bromer* † that the question of validity of a Jewish marriage was to be referred for decision to the Beth Din—or Jewish ecclesiastical tribunal ; in *Horn v. Noel* ‡ that the parol evidence of witnesses to a Jewish marriage must be refused without production of the Kethubah, or written contract of marriage incident to every Jewish marriage ceremony ; and in *Gower v. Lady Lanesborough*,§ that a Jewess might be permitted to give parol evidence of her own divorce in a foreign country, according to the custom of the Jews there. These cases are not cited in Mr. Amram's book, perhaps because he has treated the important matters discussed rather from the scientific than the practical point of view ; but they will serve to shew the very real and vivid interest which the subject possesses even to the ordinary practising lawyer.

\* 1 Hagg. Cons. Reports.

† 1 Campbell Reports, 61.

‡ 1 Hagg. Cons. Reports.

§ Peake's Cases, 25.

To the jurist, and to the historical student, not less than to the social reformer, the Jewish Law of Divorce cannot fail to be of peculiar value and importance; and if ever the time arrives for the establishment of a common Code for all civilized nations, which may remove the growing scandal of conflicts of jurisdiction by which persons are held married in one country and unmarried in another, while their children are legitimate on one side of the border and illegitimate on the other—should, in fact, a new Convention of Berne be created to govern this vital question, as it has been for the infinitely less important subject of the property in Copyrights—the lessons which are to be derived from the Rabbinical method of treatment, and the rules which have been derived under their system from the original Biblical dispensation, will undoubtedly hold a prominent place in the logical and scientific settlement which may then, it is hoped, be finally arrived at, in the interests of advancing civilization.

HERBERT BENTWICH.

## V.—CIVIL BUSINESS ON CIRCUIT.

**I**F this article had been intended for a “lay” instead of a “law” magazine, it might have been advisable to have explained to the general reader that civility on the part of Bench or Bar was not in question, since, to tell the truth, it might otherwise have occurred to some puzzled laymen that the subject was one open to discussion. Be that as it may, it is possible that this article may to some extent explain how it comes about that litigants, witnesses, and jurymen are apparently, on some occasions, treated with scant regard to their own convenience at assizes.

Let us take, for instance, a common occurrence at a busy assize. Some weeks previous to the opening of the

Commission, the præcept, signed by the Judge coming that particular circuit, has been received by the High Sheriff bidding him to summon grand jurymen, petty jurymen, prosecutors, witnesses, and all others whom it may concern, to attend at the assize town on the appointed day. The Judge, being, for example, an active reformer, has determined to sit for business on Commission day at each place, so as to avoid what the legal iconoclast terms "the judicial scandal of useless Commission days." With similarly inspired zeal the Judge has curtailed the number of days allotted to each assize town to the narrowest limit. Litigants, solicitors and witnesses in each cause are, of course, bound to be in readiness on the first day of business (unless otherwise forewarned), since they have little or no knowledge of the extent of the criminal business; nor is it possible for them to forecast the number of prisoners who may plead guilty and so enable the way to be cleared for civil business. Such being the position of affairs, the following incident occurs:—On the afternoon before the day on which the assizes should open, a telegram arrives from the Judge, "Detained by civil work at A. Must postpone Commission day at B. Will wire time of arrival later."

Now the amount of inconvenience such a change of programme involves can hardly be realised by anyone not familiar with circuit business. Apart from the personal inconvenience to the Sheriff, who has had to stable his horses and carriage and engage his rooms in the county town by a fixed date, innumerable business arrangements have been made by solicitors, busy barristers with town practice, witnesses earning their livelihood elsewhere, and jurymen engaged in business and trade, to suit their attendance on this and the next particular days. These arrangements have all to be countermanded by telegraph. Trains may fail to fit. Posts may fail to convey the notices of postponement in time to prevent early departures.

Witnesses arrive before they are needed, and have to be paid accordingly. Tradesmen are brought away needlessly from their counters and agriculturists from their land; while the Judge himself, to his own and everyone else's inconvenience, is obliged to sit over-time at A. in order to finish the work. Everyone is in consequence tired and worried. Litigants are driven into "settlements" by force of circumstances. In a word, the whole legal machinery is out of gear. Moreover, unless the work at B. turns out to be lighter than was expected, the same pressure will re-occur there, and C. will suffer in its turn.

As long as only one Judge is allotted to any assize town the trial of civil actions must take a secondary place and the interests of all classes of people engaged in that work must accordingly suffer. Nor can late sittings by an active Judge be considered by any means an adequate remedy. Jurymen frequently thereby lose their last train home, and have to spend the night in an insalubrious pot-house at their own expense. Witnesses may be left in an equal plight at the litigants' expense. Barristers miss consultations and lose their dinners and consequently their tempers; while the Judge himself suffers from unduly prolonged tension. In the late sitting of a Court, except by consent of all, for the purpose of finishing a case, the aspect of the Court is not apt to be dignified; the sword of justice no longer rings like true steel; there is a good deal of ineffectual slashing.

Having dwelt upon this one picture let us look at another of an opposite school, which may be styled that of the old-fashioned leisurely assize. Business is timed to commence at 11.30 a.m. Owing to trifling delays at Church and *en route* it may be mid-day before his Lordship is able to settle himself down on the bench. Many of the county gentlemen ready to serve on the grand jury and all



the jurymen in waiting have been kicking their heels about the Court corridors since 10.30 a.m. owing to the exigencies of the local train service. One o'clock strikes ere the grand jury, after a prolonged harangue from the Judge, find their first true bill. His Lordship thinks it might be more convenient to adjourn and begin work at 2 p.m. By the time the first petty larceny is disposed of, and the other prisoners' pleas taken, it is time for the old-fashioned adjournment at 4 p.m. Perhaps a pertinacious solicitor gets a timid junior to appeal to the Judge, who is just about to leave the bench, with the query: "Might I ask if your Lordship would say when you would take the first cause?" After a hasty consultation with the Clerk of Assize the judicial reply will probably be: "I cannot at present say, Mr. Briefless; but I will say this: I will *not* take any causes to-morrow, but all parties must be ready by 10 o'clock on the day after." With profuse thanks counsel engaged elsewhere on the next day hurry off by late trains to return again at all hours of the ensuing night and dawn only to find that the Judge is not sitting till 10.30 a.m., that there are two long criminal cases to occupy all the morning, and that the Judge has announced that he cannot sit later than 5 o'clock, when all non-jury causes not reached by that time must be adjourned to London or elsewhere or be left as remanets.

Now had the criminal work been taken in hand promptly at 11 a.m. on the first day, it could probably have all been completed by six o'clock. Prisoners would not have been kept wearily awaiting trial in the cells below the Court: police and goalers, jurymen and witnesses, could all have been let free for other duties and business: indigent barristers would have escaped two nights at an expensive hotel; while the causes would have been taken in hand by a Judge fresh to his morning work, and been completed by the close of the second day.

Can anyone, looking at these pictures of common events, wonder that a suspicion of unnecessary incivility creeps into the minds of jurymen and witnesses? And that neither over-active nor over-leisurely assizes bring balm to those engaged in civil business on circuit.

Yet it is not the fault of either Judge that has caused the mishap; that is rather due to the lack of any scientific forecast of the amount of work to be got through at any one place. What is the cause of this discouragement of civil business on circuit?

One immediate cause is the uncertainty as to the time of the trial of any action, with the consequent delay and unforeseen expense incurred. Then also there is frequently insufficient time for full trial of an important action, owing to the exigencies of the criminal work, involving "Further Consideration" in London. The *fons et origo mali*, however, is the single Judge system. Given two Judges in any assize town, the civil work begins simultaneously with the criminal work, at a fixed time, which in itself would be a great gain. The only question left open in that case is the arrangement of the day's cause list, as to which, litigants must take their chance in London as elsewhere. Moreover, whenever the one Judge has got through his work, be it criminal or civil, he is at liberty either to help his brother Judge or to keep time at the next place.

Presuming, however, that in the present trend of judicial reform, such a return to old ways is out of the question, except under the form of the linked Judge system, whereby a Judge in town holds himself in readiness to be summoned to the help of a Judge on circuit (a system which might advantageously be more insisted upon), it will be more expedient to seek for some other remedial measures. But before doing so it is necessary to determine on what principle civil business on circuit is to be dealt with. Is the civil assize to be mended or ended? Is centralisation to

supersede all local venues for the purpose of trials in the High Court, except in a few great commercial centres such as Liverpool, Manchester, Leeds, Birmingham, Bristol, and Cardiff?

Apart from the constitutional character of English local jurisdiction—a consideration not to be disregarded as academic—English antipathy to centralisation is founded on a very rational basis. The advantage of civil trial in the suitors' county is surely as obvious as the claim of an accused to "put himself on his country." There is the personal convenience to the provincial litigant of coming to his own county town at far less trouble, expense, or fluster than is involved in a journey to London, with the consequent housing of suitors, solicitors, and witnesses at strange hotels and the finding of their way about unknown and confusing Courts of Justice.

Then there is the difficulty of keeping witnesses in attendance away from their homes, since there is as much uncertainty in London as elsewhere as to the exact day and hour of possible trial. The mere fact that all parties concerned in a case can get back to their homes and offices and shops each day and so keep in touch with their own business, serves to ease the burden of litigation.

But there is another more substantial advantage in the local trial of actions. The experience of provincial juries in itself, in the majority of cases, is a distinct aid to justice being secured as well as being the cause of a great saving of time in the administration of the law in actions which would be "Greek" to a London juryman. They are more apt also to judge of the value of the subject-matter in dispute or of its triviality in the particular community or in the local surrounding circumstances than jurymen who are strangers to the locality could be. An agricultural jury, not necessarily composed of farmers, but of provincial townsmen accustomed to agricultural dealings, can adjudi-

cate more correctly and expeditiously on a right-of-way dispute, or on a matter of tenantry, waste, trespass, or breach of contract in the sale of grain by sample, than a London jury or a jury of mere tradesmen at a commercial centre. A Nottingham jury will grasp the material points in a lace machine dispute quicker than a Derby jury living in the neighbouring county. A Northampton jury will grapple with an action over leather "uppers" which would require hours of explanation and illustration to an average London jury. There are, again, questions as to cropping, tenantry, notices, leases, hiring of servants, and of trading in many ways which are entirely local and customary, for all of which a local jury forms a surer tribunal than the sharpest Judge or the smartest London special jury.

Moreover, the importance of a libel or slander may be entirely local or accidental to the position of the parties in a particular neighbourhood, and is therefore peculiarly capable of being appreciated at its proper value by a jury drawn from a similar environment, though not of course one too closely connected with the actual locality.

Lastly, it is a mutual advantage for the Judges to know the provinces, and for the provincials to know Her Majesty's Judges. Their presence serves as a useful civic lesson for the provincial public, more accustomed to be left to the tender mercies of Quarter Sessions and County Courts, and forms a standard to which the administration of justice can be raised in the public view. For this reason it is a matter of regret that the Lords Justices cannot take their turn, say once a year, at civil assizes. They would thereby keep in touch with work at *Nisi Prius*, while they themselves would not be lost to sight though to legal memory dear, a phrase which inevitably escapes one at the thought that Lord Justice Vaughan Williams and Lord Justice Collins can no longer be numbered among the visible planets in the circuit orbit.

Comment is frequently made on the assumed pettiness of a large proportion of the causes tried at assizes. The answer to that is two-fold. First, it is not for Judges or busy lawyers to estimate what is worth trying, or to consider that such intellectual persons as themselves should only be called upon to deal with important causes. This fallacious idea is based on the assumption that certain Courts are to be deemed "Inferior Courts" on account of the smallness of the subject-matter in dispute to be dealt with by them. The notion is one derogatory to the administration of justice. Courts, whether "Superior" or "Inferior," are constituted to sit and to try whatever disputes individuals may choose to bring before them. Courts are made for suitors, not suitors for Courts. Knowledge by the public that their grievances, real or imaginary to themselves, will be heard and dealt with by skilled lawyers, is of more advantage to the community, and tends to a clearer recognition of the principles of law and order than any "getting through the business" within the shortest possible time. No doubt there is a *via media* whereby a tactful Judge and wise "counsellors" can settle unnecessary disputes, but care should be taken that the settlement should be a genuine solatium to all parties and not the forcible "pooh-poohing" of a case out of Court, a course of action which often merely leaves a rankling sense in the minds of both parties that they have not had a fair hearing from a Court which they themselves have (indirectly) paid for that very purpose. The way in which a case is tried is of greater importance than the subject-matter in dispute, so far as the maintenance of trust in and respect for the administration of justice is concerned.

The second answer to the above-mentioned comment is, that it is a mistake, in fact, to suppose that the average of substantial causes tried in London is higher, comparatively speaking, than those tried on assizes. London journals, no

doubt, make much of the pick of causes tried there, but there remain scores of petty disputes unreported, yet forming part of the daily fare. A learned Judge, after sitting for a whole term trying London common jury actions, has been heard to say that, in his opinion, three-fourths had "absolutely nothing in them."

Another advantage derived from local trials is the alleviation afforded thereby to London jurymen and to jurymen at industrial centres. The lot of a London jurymen is particularly onerous, liable as he is to enforced attendance at continuous London sittings, as well as to monthly Old Bailey and London Sessions, not to mention County Courts, Coroners' Inquests, and Sheriff's Assessments. Assuredly everything possible should be done to alleviate the burdens of jurymen in these days, seeing that they are, in civil cases, the one class whose enforced service is practically unpaid for. They are present by the choice of the litigants, and, pending at least the proper payment of their expenses, either by the litigants themselves or by the State, reformers should hesitate before imposing on jurymen in London or at a few large centres the duty of trying disputes from other parts of the country.

Assuming, then, that civil business on circuit should, for the reasons given, be encouraged rather than discouraged, what remedies can be suggested for lessening the uncertainties of such work?

Two practicable steps can be at once suggested: (1.) The compulsory fixing of days before which civil business shall not be taken at each assize town. (2.) A more scientific official forecast of the time likely to be required for each class of business. The first suggestion has been attempted in a voluntary form in the case of a few Judges, but has latterly been allowed to lapse. Its merit is that it at least saves parties to civil suits from attending on the first day of an assize and probably from having a two day's

wait. So long as there is any uncertainty about judicial arrangements, and when, by the efforts of a wary and persistent counsel, a short common jury cause, or more likely a non-jury cause, can be slid through during a gap or adjournment in the criminal work, clients and witnesses are kept in a state of suspense. This can only be insured against by the official publication of definite days before which civil work will not commence. The possibility that a premature collapse of criminal work may leave a Judge with an afternoon to spare is of much less disadvantage to himself or the taxpayers than the fact that by the fixture of days he has saved suitors unnecessary expense and delay. Again, the order in which causes would be taken should be a well understood rule, namely, as "Common Juries," "Special Juries," and "Non-Juries." Solicitors on seeing the cause list are thereby enabled to calculate on the possible time in which any particular cause would be reached. These elementary principles of ordinary procedure are constantly overlooked.

A more important remedy, however, would be a real attempt to make a scientific forecast of circuit business in general. The scheme of fixed dates at present in vogue is no doubt a useful barometer as to the approximate time at which an assize will occur and of its probable duration, but the volume of business varies so much at different periods of the year that it is impracticable to keep to any permanently fixed rule. The nature and extent of both crimes and causes alter at times in particular localities owing to new surroundings and new classes of population coming into existence. A town which once produced customarily a substantial cause-list ceases to be litigious or finds the County Court a sufficiently effective tribunal. A forecast based on official knowledge of the average crime and litigation at each assize town during the preceding five years and upon the returns to hand and the reported

prospects of causes for trial should be obligatory before any dates are fixed upon by the Judge in consultation with the circuit officials. For criminal business the 'gaolers' returns of the prisoners awaiting trial and the depositions forwarded by the magistrates' clerks afford a fair data on which to forecast the time required ; but for civil business no such data are to hand before a circuit commences, since causes can be entered up to the eighth day before the commission day fixed upon for each place, and solicitors are unwilling to advise their clients to expend the entrance fee of £2 until such entry is found to be absolutely necessary, that is to say, until the last possible moment at which a hearing can be secured. It is, therefore, not until a week before arriving at an assize town that a Judge can know definitely the amount of civil business to be grappled with. As regards the large commercial assize towns this is no great drawback, since Leeds, Birmingham, Bristol and Cardiff all come at the end of their respective circuits, and at each of these places two Judges attend and "sit to finish." There are no necessary fixtures beyond them, and a fairly substantial cause-list can always be reckoned upon. Liverpool and Manchester stand in the same category. The difficulty and inconvenience, therefore, is limited to the other provincial assize towns, and it is for these only that a forecast is necessary.

In order to obviate this difficulty, why should not circuits, apart from the cities above enumerated, be treated for the purpose of entering causes as analogous to law terms ? Let all causes, at other than the last place on circuit, which parties wish to have tried on any of the winter assizes be entered at the district registries, or with the respective associates, by January 5th in each year, and all those for trial on the summer assizes by June 5th in each year. The circuit officials, having before them the 'gaolers' returns and the number of causes entered for



trial on the whole circuit, and with quinquennial averages to hand as further data, would draw up a scheme of dates to be submitted to the Judge going the circuit, and, upon his approval, would at once publish the same, the time for both criminal and civil business being duly notified. Allowance would, of course, have to be made for future entries, as is now made for subsequent commitments, but later entries of causes should only be made by leave of the Judge going the circuit or, to save trouble and expense, upon application to the associate, who would grant the application or refuse it upon his knowledge of the existing entries, and of the time likely to be at the Judge's disposal. An appeal from the associate's refusal (but not from his consent) to the Judge going the circuit should be allowed as of right. The associate might usefully be empowered to offer trial at some place other than that applied for, where more time was likely to be available.

To make such a scheme practicable, some inducement must be held out to solicitors and their clients to enter their causes so long beforehand. For this purpose the present entrance fee of £2 might be reduced by one-half at least, and possibly to 10s.; the loss to the revenue could be made up by doubling the present fee of £1 for entering judgment, since that is a fee out of costs secured by the victory, whereas the entrance fee is based upon hypothetical security. Moreover, the increased number of entries at a low fee would serve to counter-balance the primary loss. That this scheme might tend to the entry of many causes which would not eventually come to trial is doubtless true, but here again the experience of circuit officials as to the average number of non-efficient causes at a given place, an experience based on the causes of action as well as on the names of particular solicitors entering such causes would serve as a check. The Home Office returns already include the number of causes withdrawn

at each assize town, as well as many other details which are pigeon-holed away, but from which many useful data might be deduced with a little care.

Lastly, wherever there is a cause-list likely to require more than one day's work, the local publication of a daily list should be compulsory. By the close of the first day's work at any assize the course of business can be approximately mapped out, and the associate should thereupon be authorized by the Judge to publish a list of the number of causes which would be in the first civil day's list; this saves many a solicitor, suitor, and witness unnecessary attendance and expense, while jurymen can be equally spared by attending in batches instead of the whole panel being kept hanging about or overcrowding the Court.

By means of some such practical and unsensational "reforms," requiring no legislation beyond a few "Judges' Rules," much might be done to make the wheels of Justice in civil business on circuit run more smoothly for all concerned. The age for heroic reforms, as that of heroes, seems to have passed away, and no legal legislator appears willing to grasp the nettle of judicial reform on a grand scale. Why, then, should not the Judicial Bench appoint a small committee of themselves, assisted by some Home Office and Circuit official experts, and without more ado draw up the few necessary "Assize Regulations for the conduct of Civil Business"?

SPENCER L. HOLLAND.

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## VI.—JUDGE JEFFREYS.\*

**L**ORD CAMPBELL observes at the commencement of his life of Jeffreys in the Lives of the Lord Chancellors, "It is hardly known to the multitude that this infamous person ever held the Great Seal of England, as from the almost exclusive recollection of his presiding on criminal trials he has been execrated under the designation of Judge Jeffreys, which is as familiar in our mouths as household words." This is very true, all his most striking appearances and most dramatic exhibitions occurred during the short period of little more than two years, when he held the Chief Justiceship of England. It is his alleged conduct during this time which has earned him his bad pre-eminence, and which, I fear, in spite of Mr. Irving's able pleading, will send him down to all posterity as the least attractive figure that ever sat on the English Bench. Lord Campbell further says: "I began my critical examination of his history in the hope and belief that I should find that his misdeeds had been exaggerated, and that I might be able to rescue his memory from some portion of the obloquy under which it labours." Whether Lord Campbell ever sincerely entertained this hope may perhaps be doubted, but if he did he was quite unsuccessful in his efforts. His picture of Jeffreys is only surpassed in the blackness of its tints by the much better known one in Macaulay's History. There the picturesque imagination of that great writer revelled in the description of a being scarcely human. A drunken, unprincipled, corrupt, cruel and bloodthirsty monster glares out at us from his pages; we almost think we can hear him roar and jeer at the wretched prisoners pleading for their lives before him. Mr. Irving has many opportunities of toning this picture down, of which he avails himself with much skill and shews that many of the illustrations given by Macaulay to prove the violence and cruelty of Jeffreys when read with the context and the surrounding circumstances, do not justify the view the writer has taken of them. Mr. Irving has undertaken a very difficult task, and devoted to it great industry and marked skill as an advocate. He has a clear and telling style, and a pretty gift of epigram and satire. If a criticism may be permitted, he is rather too lavish of the last, and by applying it not unfrequently to the man he seeks to vindicate, rather raises

\* *The Life of Judge Jeffreys.* By H. B. Irving, M.A. London; William Heinemann. 1898.

a suspicion in one's mind that he is not always quite serious in the points he raises for the defence. Mr. Irving opens his case very judiciously. He shews that the position and circumstances of Jeffreys' parents were better than his detractors have alleged; that he had judicial ancestors on both sides; that he went first to Shrewsbury School, and then to St. Paul's School, Westminster School, and Trinity College, Cambridge. In May, 1663, he was entered as a student at the Inner Temple, and five years later was called to the Bar in 1668. How he spent his time during these five years is not clearly known. According to Roger North they were spent mostly in drinking and frequenting low company. As Roger North is the principal witness to Jeffreys' early life as a student and at the Bar, and as his testimony is almost invariably unfavourable, Mr. Irving has to caution his readers not to believe him too implicitly, and, to weaken his evidence, contends that Roger North was most prejudiced against Jeffreys. He was, says Mr. Irving, a prim, proper little person, with no sense of humour, timorous and diffident, but decided in his views and strong in his prejudices, as only people of narrow views and strong affections can be. He adored his brother Francis, and Jeffreys was Francis' enemy. This may have made North thoroughly unsympathetic to Jeffreys and dislike him intensely, but it would hardly make a man of his character invent malignant falsehoods though it might make him gladly welcome any unfavourable stories he might come across. But Mr. Irving brings forward better evidence than mere disparagement of Roger North to prove that Jeffreys did not spend all his time in drinking with low companions, as he shews that Jeffreys succeeded in making valuable friends in the City, whose interest gave him a favourable start in the City Courts. One of these was a certain Alderman Jeffreys, and another was that distinguished citizen Sir Robert Clayton, whose friendship Jeffreys retained to the end. Thanks to those friends and his own striking gifts, his progress was rapid, and in three years he was elected Common Serjeant of the City of London, which proves that he must not only have had good friends in the City of London but that he distinguished himself in its courts also. Another important piece of evidence to his credit is that he was on terms of intimacy with, and was befriended by Sir Mathew Hale, whose high character renders it certain that he would not have been intimate with a young man of notoriously irregular character. Before this, had

occurred Jeffreys' marriage, one of the few undisputed circumstances in his whole career distinctly creditable. He had been making love to the daughter of a rich city merchant unknown to her father, and carried on his suit with the assistance of a young woman named Sarah Neesham, the daughter of a clergyman, who was confidante or companion to the young lady. He however was discovered, the poor companion was dismissed by the irate father, and Jeffreys, regardless of the worldly disadvantage of the step, in an impulse of generosity married her.

In relating this period of Jeffreys' career, Mr. Irving creates a decided impression in his favour, by calling attention to his portrait by Sir G. Kneller, taken in his robes as Recorder, which is now in the National Portrait Gallery, and a reproduction of which adorns this volume. The picture will rather surprise anyone who remembers Macaulay's description of his personal appearance. "His countenance and his voice must always have been unamiable, but these natural advantages—for such he seems to have thought them—he had improved to such a degree that there were few who in his paroxysms of rage could see or hear him without emotion. Impudence and ferocity sat upon his brow." It represents a remarkably handsome, refined and prepossessing looking young man, by no means the debauched and truculent ruffian of Macaulay, but a very winning face with almost melancholy eyes. That such a young man should be favourably noticed by the Duchess of Portsmouth is not surprising, and it is to her influence that much of Jeffreys' future favour at Court may perhaps be attributed.

It is here that we get the first information of Jeffreys taking any part in politics. It is not proved that he had before professed any particular opinions on these points; but it is at least probable that he allowed himself to be thought a sympathiser with the Whig opinions which were prevalent in the City, now however he became an adherent of Danby and acted on his behalf as a sort of spy on the Liberal leaders in the City, whose designs he hoped to surprise and inform Danby of. Such conduct will naturally not raise Jeffreys in our opinion, and the best Mr. Irving can say for it is, that it was conduct extensively practised in that peculiarly corrupt and unprincipled time. He after this, in 1677, was appointed Solicitor-General to the Duke of York and received the honour of Knighthood, and the next year was honoured by a visit from the King and the Duchess of Portsmouth at a house named Bulstrode, that he had purchased

in Buckingham. All these marks of Royal favour do not seem to have affected his popularity in the City, as two or three months after this Royal visit he was freely, unanimously and by scrutiny elected Recorder of London.

Mr. Irving here successfully defends Jeffreys from the charge brought against him by Macaulay that :—" There was a fiendish exultation in the way in which he pronounced sentence on offenders. Their weeping and imploring seemed to titillate him voluptuously, and he loved to scare them into fits by dilating with luxuriant amplification on all the details of what they were to suffer. Thus when he had an opportunity of ordering an unlucky adventuress to be whipped at the cart tail, ' Hangman,' he would exclaim, ' I charge you to pay particular attention to this lady ! Scourge her soundly, man ! Scourge her till the blood runs down ! It is Christmas, a cold time for madam to strip in ! See that you warm her shoulders thoroughly ! " He shews that the unlucky adventuress of Macaulay was a confirmed thief and trainer of thieves, and that his violent exhortation is a rhetorical version of part of a formal sentence. On reading the other sentences of this session as given by Mr. Irving we agree with him that Jeffreys appears in a distinctly favourable light, as his tone is moderate and not without a certain sympathy.

When the country, thoroughly distrustful of the Court and its intrigues with France, got seized with the fever of the Popish plot which for their own objects was stimulated by Shaftesbury and the other Whig leaders, and when Titus Oates, the most impudent and pernicious of perjurers, formulated his monstrous accusations against the Roman Catholics, Jeffreys appeared in many of the prosecutions for the Crown ; but he does not seem to have been specially unfair to or vehement against the prisoners beyond the general practice of prosecuting counsel in those days, when the laws of evidence were very imperfectly understood, and when, instead of the present presumption that an accused man is innocent till he has been proved to be guilty, the presumption was rather the other way. The position of a person tried on a capital charge was in those days a most deplorable one. It is thus described by Sir James Stephen, in his History of the Criminal Law, from which Mr. Irving quotes. " The prisoner, as soon as he was committed for trial, might be and generally was kept in close confinement till the day of his trial. He had no means of knowing what evidence had been given against

him. He was not allowed as a matter of right but only as an occasional favour to have either counsel or solicitor to advise him as to his defence, or to see his witnesses and put their evidence in order. When he came into court he was set to fight for his life with absolutely no knowledge of the evidence to be produced against him." He was not allowed a copy of the indictment, and his witnesses, if he succeeded in getting them to the place of trial, were not allowed to give evidence on oath, and the jury were pretty sure to be reminded of this fact, and this inferiority to the witnesses for the prosecution pointed out by one of the prosecuting counsel. In political trials too, the jury were generally carefully packed by sheriffs of different opinions from the accused, in an age when party hatred rose to heights almost unparalleled in English History. As if this was not enough against the prisoners, they were tried by judges, many of them violent politicians, dependent for not only promotion but the maintenance of their position on the will of the Crown. Is it surprising that there were not many acquittals? In cases of misdemeanour counsel was allowed, and the inconsistency and hardship caused by this rule was recognised by Jeffreys, who seems in this respect to have been in advance of his age, and is reported to have said in Rosewell's case: "I think it is a hard case that a man should have counsel to defend himself for a twopenny trespass, and his witnesses examined upon oath; but if he steal, commit murder or felony, nay, high treason, where life, estate, honour, and all are concerned, he shall neither have counsel nor his witnesses examined upon oath." After the revolution, the Whigs, perhaps smarting under their recent experiences, passed the Act 7 & 8 Will. III., c. 3, which, after reciting that nothing is more just and reasonable than that persons prosecuted for high treason and misprision of treason, whereby the liberties, lives, honour, estates, blood and posterity of the subjects may be lost and destroyed should be justly and equally tried, and that persons accused as offenders therein should not be debarred of all just and equal means for defence of their innocences, in such cases enacts that every person so accused and indicted, arraigned or tried for any treason whereby any corruption of blood may ensue and a misprision of such treason, shall be received and admitted to make their full defence by counsel learned in the law.

This Act also directed that no person shall be indicted, tried, etc., of high treason and misprision of such treason, but by

and upon the oaths and testimony of two lawful witnesses, either both of them to the same overt act or one of them to one and the other of them to another overt act of the same treason.

The same Act further provided for the delivery to the accused of a copy of the indictment five days before the trial, and a copy of the jury panel two days before the trial. By 7 Anne, c. 21, § 11 (in part repealed and re-enacted by 6 Geo. IV., c. 50) a copy of the indictment, a list of the witnesses to be produced, and of the jurors impanelled are to be delivered to the accused a certain time before the trial.

Mr. Irving devotes some space to the trials presided over by Scroggs, partly, we presume, to shew how the trials of Roman Catholics were conducted under Whig pressure, and partly to shew that a violent and unfair judge was not a rarity in those days, and so far to excuse the violence Jeffreys subsequently manifested. It is only fair to Jeffreys to point out that one of the trials over which he presided as Recorder, namely, that of a man named Giles, for an attempt to murder a Monmouthshire magistrate, is considered by Sir James Stephen to have been "conducted with conspicuous fairness and decency." After a while the belief in the Popish plot began to diminish; the evidence of Oates and his gang of lesser perjurers was disbelieved and the accused were acquitted.

The tide had turned, and after the King had dismissed his last Parliament at Oxford the judicial war of revenge began. The first prosecution was that of Colledge, the Protestant joiner, memorable mainly for two incidents—the first, the taking away from the prisoner of the papers furnished to him for his defence; the contents of these were mainly very elaborate and carefully drawn instructions for his defence. It ended in a curious sort of compromise, by which most of the papers were returned after the prosecution had had the benefit of perusing them. This is justly characterised by Sir James Stephen as one of the most wholly inexcusable transactions that ever occurred in an English Court, and leaves a stain on the Lord Keeper's (North) character which the many amiable points in it cannot efface. The other occurrence was the appearance of Oates as a witness for the defence, and his altercation with Jeffreys. The next time they met in a Court of Justice their positions were still more unequal, as Jeffreys was then Lord Chief Justice of England and Oates indicted before him for perjury. The Whigs made a stubborn resistance to the attacks of the Crown, and were for a



time successful. The Whig Sheriffs returning grand juries who steadily ignored all the bills presented against their party leaders, and Jeffreys in vain, as Chairman of the Middlesex Sessions, tried to reform the grand jury panels. At last the Government, after a desperate conflict, succeeded in getting two Tory Sheriffs returned for London and Shaftesbury fled.

The Whigs become desperate, plunged into conspiracies which were discovered, and then ensued the two most celebrated trials for high treason of that time.

The first, that of Lord William Russell, has no very important bearing either on the mode of conducting trials or the conduct of Jeffreys; he appeared for the prosecution, and whatever the Whigs may have thought, earned the approval of Nutt, who boasted that "if our trials in England were fair both in the private and public conduct of them these were."

Before the next trial, that of Algernon Sidney, a great change had taken place in Jeffreys' circumstances; he was rewarded for his exertions, political and forensic, and sacrifices on behalf of the Court (he had been compelled to resign his Recordership, and, it is said, was reprimanded at the bar of the House of Commons for the part he took in advising the King how to direct the Corporation to suppress petitions praying the meeting of Parliament), by promotion to the high office of Lord Chief Justice of England.

As it is his conduct in this capacity that Mr. Irving has most to defend, this seems a good place to quote what is really the foundation of all his justifications of Jeffreys' conduct apart from disputes as to matters of fact. It is that we must not judge Jeffreys from the reports of the Whig writers. More than once does Mr. Irving repeat this caution, most important from his point of view, "from the dissolution of Parliament in 1681 to the death of Charles in 1685, the history of the commencement of the Whig and Tory struggle is to be read, almost entirely in the volumes of the State Trials. In their pages we may read how the methods of the Whigs in 1678,—the violent convictions of unoffending Papists on infamous testimony, the coercion of judge and jury by popular frenzy, and the unscrupulous use which Shaftesbury and his party made of the weapons of the law—were turned against their authors; and how on better evidence and with more justice, the Whig leaders paid with death the penalty of their past excesses. Whig writers have deliberately blinded us to the retributive element in the

so-called martyrdom of their heroes in the cause of English liberty and have attacked the conduct of those whose duty it was to work out this retribution, with an intemperance that less biased judges have been unable to approve or justify."

Before the new Chief Justice and three other justices, Algerpon Sidney appeared to stand his trial for high treason. Apart from the justice of his rulings, Jeffreys throughout this trial behaved with dignity and decorum; he rejected an opportunity of convicting Sidney without a trial on a plea he tendered, and heard and replied to his numerous objections fairly patiently, but he is said to have committed two injustices—(1) in allowing a document found in Sidney's study to be given in evidence and proved by comparison with other writings, but as a matter of fact the document was proved to be in his handwriting by three separate witnesses; (2) that to prove treason it was necessary to have two witnesses, but only one was produced.

Sir James Stephen considered this objection wrongly taken, and says, "Assuming the possession and writing of the pamphlet to be an overt act of treason it was proved by at least four witnesses, namely, one who had found it on the prisoner's table and three who swore it was his handwriting. It was said that the possession of the writing was not an overt act of treason, as it appeared only that the paper was in the prisoner's study and not that he had published it or that he meant to publish it, in furtherance of his design, and this I think was true; but regard being had to the then state of the law, I do not think that the illegality of permitting the jury to treat the possession of the pamphlet as an overt act of treason was as clear as it would be at present."

That Jeffreys behaved with fair decorum and that the illegality of his ruling was not as clear as it would be at present, is the most that can be said for his conduct in this trial, and his biographer rather gives away the case when he admits that Jeffreys did not mean to let him off if he could help it.

Lord Campbell's charge against Jeffreys that he "had the satisfaction of pronouncing with his own lips the sentence upon Sidney of death and mutilation instead of leaving the task as usual to the senior puisne judge," has been disproved effectually by Mr. Irving, who remarks that both before and after the time of Jeffreys in cases of high treason tried in the King's Bench,

the Chief Justice did not leave to his puisne, as in other cases, the delivery of the sentence.

Space does not permit comment on all the trials presided over by Jeffreys about this time, and which Mr. Irving describes with much spirit and illustrates with judicious extracts from the reports, but it is evident that Jeffreys was determined in every case to obtain if possible a verdict for the Crown, to do which he invariably decided every doubtful legal question against the prisoner. The case of Sir Thomas Armstrong is one that has been much commented on, and for his conduct in which Jeffreys had been much attacked.

Sir Thomas Armstrong had fled the country, and in consequence had been outlawed. A sentence of outlawry was equivalent in cases of treason to a conviction. The States of Holland gave him up to the English Government, and he was brought before Jeffreys for sentence when he pleaded that by an Act of Edward VI. he could claim to be tried, as he had yielded himself to the Chief Justice of England within the year, Jeffreys ruled that as he had been brought there, he had not yielded himself, and granted a rule for his execution. The usual painful altercation between judge and prisoner was rendered more painful than usual, by Armstrong's daughter taking part in it and keeping her construction of the statute on the court. Jeffreys' ruling is quite arguable, and although denounced by Hallam, who says of Armstrong's contention that nothing could be more evident in point of law, and by Lord Campbell who calls it "his clear right in law" was not the point on which the outlawry was subsequently set aside by the Court of Queen's Bench, and Mr. Pike, in his learned History of Crime considers that there is hardly a doubt that Jeffreys was technically in the right. It has not, however, been followed in *R. v. Johnson*, 2 Strange 824, or in the case of Purefoy referred to by Erskine in his defence of Hardy, 24 St. Tr. 944.

So far it must be admitted that considering the customs of the time Jeffreys' conduct had been decent, and although he has strained the construction of the law against the accused, he has given no decision which was, according to the state of the law then, manifestly unjust; but with the accession of James II. in 1685 Jeffreys became more secure in his position, as his new master "loved severity, and no view of the extent of his own prerogative could be too exaggerated to satisfy his principles

of government." A certain check which Charles imposed on the Chief Justice, an instance of which he had recently experienced after the trial of Rosewell, was removed. At the same time, Jeffreys was unfortunate enough to fall a victim to the tortures of the stone. The effects of having his arbitrary principles encouraged, and his fiery temper aggravated by a painful disease were soon to shew themselves. They cannot be said to be evident at the trial of that arch purjurer Titus Oates, which was the first important trial over which Jeffreys presided under the new reign. This infamous wretch had been cast in £100,000 damages in an action for slander brought against him by the Duke of York in which Jeffreys had presided, and being unable to pay, had been committed to the King's Bench prison, from whence he was brought to stand his trial on two indictments for perjury. At the trial of the first indictment Jeffreys behaved with fairness, rejected improper evidence on behalf of the Crown, and though he summed up in the most decided way for a conviction, it was justified by the evidence; the second trial was shorter and the summing up more violent. Oates was convicted on both counts and a week later came up for judgment. The sentence was severe, in fact it can hardly have been supposed that he would survive it. Fines, pillorying, and a flogging on a Wednesday from Aldgate to Newgate, and on the following Friday from Newgate to Tyburn. Here was an opportunity for Jeffreys to indulge in, according to Macaulay and Campbell, his favourite amusement of passing a ferocious sentence. But no, the sentence was delivered by Wythens, who expressed his regret that he could not carry it further and give judgment of death upon him.

Strong testimony is given in favour of Jeffreys' conduct at this trial by an evidently unfriendly witness, Lord Ailesbury, who says, "I was greatly surprised at his good temper, and the more because such impudent and reviling expressions never came from the mouth of man as Oates uttered."

The next important trial he presided at exhibits a marked contrast in tone; this was on a charge of seditious libel against the eminent Nonconformist divine Richard Baxter, for reflecting on the Prelates of the Church of England. According to the report of this case Jeffreys gave full scope to his natural violence and prejudice against the Dissenters, and conducted the trial with no pretence of fairness or ordinary decency. He bullied and silenced the defendant's counsel, abused, threatened

and mimicked the defendant, and would not allow him to speak in his defence or call witnesses, and charged the jury to find him guilty. \* It is interesting to observe how Mr. Irving treats this case; he remarks and truly that we have only a description of it written by the prisoner and his friends; and that any such narrative cannot be implicitly accepted. This is true to a certain extent, but if this description had been grossly wrong there would probably have been some contradiction of it published; and it is not quite fair to attribute to a man of Baxter's character such a perversion of the truth as could alone excuse Jeffreys' conduct. Mr. Irving's other explanation is more probable. He says, "Jeffreys hates all Dissenters; he believed them to be hypocrites who made religion a cloak for treason and sedition, the descendants of the psalm-singing fanatics who had put their King to death." Jeffreys, the Bishops, and all those who joined in the stern suppression of Dissent, did not do so from motives of religious persecution, but of revenge for the past and dread of their resorting once more to civil war for the assertion of their rights. He was probably the fiercer against Baxter because Baxter's trial occurred at a time when a rebellion was imminent which found its strongest support among the Dissenters. He was accordingly only too ready to regard Baxter as one of the fomenters of the coming disturbance and to pour out on his venerable head the vials of his wrath.

This trial took place on May 30th, 1685; on June 11th the Duke of Monmouth landed at Lyme.

It is not necessary to relate how he was welcomed by the middle and lower classes of the Western Counties, nor how his hopes were dashed and his cause ruined by his defeat at Sedgemoor. After a time the military executions of Kirke were stopped, and Jeffreys at the head of a Special Commission of five judges was sent down to the West to empty the gaols. It is on his manner of executing this duty that the greatest accusations against him depend. Up to this time, though he may have strained the law in his interpretations of it in the cases of Sidney and Armstrong, and behaved unfairly and truculently in his trials of dissenting ministers, yet it is on his conduct during little more than a month that the lasting obloquy on his name has come. This is how Mr. Irving commences his view of the "Bloody Assize": "If a man of passionate temper, suffering the agonies of a peculiarly cruel disorder, is appointed in his capacity as judge to try, by the comparatively slow process of

law, more than a thousand rebels against the Government of which he is himself an ardent member, at a time when mercy to rebels and mercy in the administration of the law were no parts of the ethics of political strife, it is more than likely that from a combination of such circumstances results will ensue very shocking to modern notions, and all the more appalling if treated by writers whose political prejudices tempt them to forget the differences of thought and spirit that divide one century from another."

The Assize began at Dorchester. There were not many cases for trial connected with the rebellion, but one is the best known of all the cases on the Assize, and the one which is most often quoted against Jeffreys. An old lady named Lisle, the widow of one of Charles the First's judges, was indicted for high treason in harbouring and concealing one John Hicks, a dissenting minister and follower of the Duke of Monmouth.

Hicks was taken at "Lady Lisle's house" (as she seems to have been called), and it was proved that he had been with Monmouth's army. The two questions which had to be decided were one of law, whether a person could be convicted as an accessory before the principal had been convicted, and one of fact whether Lady Lisle knew Hicks had been in Monmouth's army. The case against her rested mainly on the evidence of a man named Dunne who had brought Hicks to her house, and it is in the way Jeffreys treated this witness, at whom he repeatedly swore and railed, in the course of his long cross-examination that Sir James Stephen considers "the most disgraceful part of the trial, or rather the most notorious and glaring instance of brutality which occurred in it." It must, however, be said in excuse that Dunne was committing perjury, and that Jeffreys, from his previous examination of another prisoner, knew it. He directed the jury, in answer to a question, that it was equally treason to harbour an unconvicted traitor.

On this point Sir James Stephen says: "The conviction was probably illegal on the ground that Hicks, whom she harboured, had not been convicted before her trial. Her attainder was reversed in Parliament upon this ground, and Foster, relying on the authority of Hale, treats this as good law. It can no doubt be supported by some strong arguments, though others in the contrary direction might be suggested; but the law was vague.

I think this is another of the numerous instances in which there really was no definite law at all, and in which the fact that a particular course was taken by a bad man for a bad purpose has been regarded as proof that the course taken was illegal." The sentence of burning to death was clearly legal. A woman named Merryweather was sentenced to the same punishment in the next reign for high treason, and Barbara Spencer in 1721. The shocking part of the whole business is the fact of a woman being punished by death for merely following the merciful dictates of her heart, and sheltering a wretched fugitive; there must have been many such cases during the great civil war, but no such punishment was inflicted. This is the only case in the Bloody Assize fully reported, for all the others we have to rely, as Mr. Irving states, on the accounts given in a book called the "Bloody Assizes," published in 1687, and republished under other titles such as the "New and Western Martyrologies." As this was published by a man "associated with the violent and scurrilous section of the Whig party" and written by a man named John Tutchin who had been sentenced by Jeffreys to be whipped through all the market towns in Dorsetshire; it seems a fair comment on Mr. Irving's part that "these books must be unhesitatingly pronounced unworthy of more than a most limited and suspicious credence."

That many of the accounts are untrue and exaggerated must be pretty certain, but that the trials were hurried through without decorum or fairness, that every device was used to intimidate prisoners to plead guilty and that ferocious sentences were passed, we can have no doubt. Lord Ailesbury is a witness against him, though a loyal Tory. He advised the King to turn out both Jeffreys and Kirke to shew his abhorrence of their practices. From what occurred in other trials we may be sure that the sufferings of the accused were aggravated by the deportment of their judge. It is his unbridled tongue delighting in bullying, mocking, and reviling that gives us such a terrible impression of the man, whose perverted sense of humour could induce him to indulge his hideous merriment on prisoners in their unfortunate position, and can we doubt that in many other cases, Jeffreys behaved, as Mr. Irving has to admit he behaved, in Lady Lisle's case. "With the religious violence of some mediæval tyrant, butchering in the name of God and Christ, he called on Heaven to witness the canting villainy that beset him at every turn, and in an access of

physical and mental torture, carried out with superfluous brutality the superfluously brutal task that had been allotted to him."

Much more might be said of his conduct in this Assize, his extorting £15,000 from Mr. Prideaux for his release, conduct Mr. Irving does not pretend to excuse; his treatment of the Corporation of Bristol, etc.; but this article is already too long. Jeffreys returned to town on September the 28th, his Majesty was pleased in consideration of his many eminent and faithful services to commit to him the custody of the Great Seal of England with the title of Lord Chancellor.

Here ends the history of Judge Jeffreys. We have made no reference about his relations with and conduct to the City, his interference in elections, his campaigns against the Corporation Charters, or his domestic affairs, and though much of interest took place during his tenure of the Chancery, and much discussion has taken place respecting his conduct as an Equity Judge and as a Cabinet Councillor, in discussing which Mr. Irving shews as usual much ability and knowledge—the most interesting part of Jeffreys' career to us was over. It is as a criminal judge that he will always be known and judged, and after all Mr. Irving's efforts we can only say in favour of Jeffreys that he was born in an unfortunate time for a man of his temperament and principles, that his fiery temper, uncontrollable tongue and arbitrary disposition led him to preside over trials so unfairly and indecently, that bad as the standard of his age was he surpassed it, that allowances must be made for the violence of party feelings, and that he has laboured under the misfortune of having his life reported by political opponents sometimes more anxious to be telling than accurate. His conduct on the Bloody Assize, which will for ever condemn him, was partially caused by the tortures of a terrible disease and the orders of a cold and implacable master. We cannot sum up our conclusions better than Mr. Pike has done in his *History of Crime*: "They (Scroggs and Jeffreys) all had the misfortune to live at a time when cruelty was part of the national character, when prisoners were tortured in gaol, and crowds gloated with eager eyes over an execution for treason. No one regarding this conduct from a modern point of view could extenuate it; no one who has made himself familiar with the past would see in it anything exceptionally bad. We have the good fortune to live at a time



when excessive tenderness rather than mercilessness is the characteristic of the age. To us Jeffreys cannot appear otherwise than as a ruthless brute. There can be no harm in regarding Jeffreys as the type of all that is worst in judgeships, but he ought to be regarded as the type to which his fellows and predecessors conformed." We can strongly recommend Mr. Irving's book to all who desire a vivid picture of those perturbed times, and the proceedings in the Courts of Justice, and who wish for a dramatic description of the career of an ambitious lawyer. We are thankful for many reasons that we live in these quieter times, and one cause for our thankfulness is that we can never be called upon to hold up our hand before a Judge Jeffreys.

REGINALD TALBOT.

## VII.—THE ATTORNEY IN THE POETS.

*(Continued from p. 178.)*

**F**OR an attorney to have but a share in vituperation at large was a fate too good for him ; but Mr. William Woty put this right. Mr. William Woty's is not one of the most famous names in English literature ; even the volumes of selections now pass him by unheeded. He lives, perhaps, only by a chance reference in Boswell as part owner of a miscellany to which the great Doctor contributed. But in his day he must have been well-known, for when his poetical works, in two volumes, were published in 1770, by subscription ("All hail ! Subscription ! 'Tis to thee we owe, The plenteous fruits, which from invention grow"), more than 550 copies had been subscribed, and the list included names still well remembered. Dr. Johnson, himself, is there, and so are James Boswell, Esq., Mr. Garrick, George Coleman, Esq., Mr. Atterbury, Canon Seward, C. Phillips, and J. Phillips and Mrs. Horneck—perhaps the mother of the Jessamy bride. Now Mr. Woty misplaces no mercy in his judgment ; the attorney is a

pettifogger, and the pettifogger he proceeds, in a borrowed strain, to depict :—

### THE PETTIFOGGER.

#### A PARODY,

WRITTEN IN WESTMINSTER HALL IN THE LONG VACATION

The Courts are shut—departed ev'ry judge,  
Each greedy lawyer gripes his double fee,  
In doleful mood the suitors homeward trudge  
And leave the hall to silence and to me.

Now not a barrister attracts the sight,  
And all the dome a solemn stillness holds,  
Save at the entrance, where with all her might  
The *quean* of apples at the porter scolds.

Save that at fives a group of wrangling boys  
At intervals pursue the bounding ball,  
Make *Henderson*,\* the studious, damn their noise  
When batt'ring the plaister from the wall.

From ev'ry court with ev'ry virtue crown'd,  
Where many get and many lose their bread,  
Elsewhere to squabble, puzzle and confound,  
Attornies—clerks—and counsel—all are fled.

Contending fools, too stubborn to agree,  
The good fat Client (name for ever dear),  
The long-drawn brief, and spirit-stirring fee,  
No more, 'till Michaelmas, shall send them here.

Some ghost of Jefferies will this floor parade,  
Some daring pettifogger, stern of brow,  
Who might have done due honour to the spade,  
Whirl'd the tough flail, or grasp'd the peaceful plough.

The upstart thing some useful trade to learn,  
By far more suited to his shallow head.  
Some trade, by which he might have known to earn,  
With honest industry, his daily bread.

False pride forbade : nor to himself alone  
Confines his views, but to his son extends ;  
Forbade the youth, to quirks already prone,  
To mind the means, so he could gain the ends.

\* An author and bookseller there,

Forbade to bind him 'prentice to a trade, "  
Behind a compter all the day to stand,  
His birth by work mechanic to degrade,  
Or wait on customers with cap in hand.

Far from the worthy members of the law,  
A rogue in grain, he ever kept aloof;  
From learn'd bum-bailiff learn'd his briefs to draw,  
And where he could not find, he coin'd a proof.

Yet doth this wretch, illiterate as proud,  
With low-life homage, low-life bus'ness meet,  
And pick the pockets of th' unhappy crowd,  
Mur'd in the Compters, Newgate, and the Fleet.

Bound by their creditors in durance fast !  
In plaintive murmurs they bewail their fate,  
And many an eager, wishful eye they cast,  
Whene'er the turnkey opes and shuts the gate.

For who to dull imprisonment a prey,  
The pleasing thoughts of freedom e'er resigned,  
From home, from wife, and children dragg'd away,  
Nor cast one longing, lingering look behind.

Some sharp Attorney must the captive hire,  
Who knows each secret winding of the laws,  
Some previous fees th' attorney will require,  
Before he ventures to conduct his cause.

For you, who traverse up and down this shrine,  
And lounge, and saunter at your wonted rate,  
If in some future chat with arch design,  
Some wag should ask this pettifogger's fate.

In sneering mood some brother quill may say,  
" I've seen him oft at alehouse table sit,  
" Brushing with dirty hands the crumbs away,  
" And eye the mutton roasting on the spit.  
" There in the snug warm corner of the bench  
" Part stain'd with grease, and part defil'd with beer,  
" His thirst with cooling porter would he quench,  
" And bend his noddle o'er the gazeteer.

" Hard by yon steps, now grinning as in scorn,  
" Mutt'ring his oaths and quibbles would he stand,  
" Now hanging down his pate, like one forlorn,  
" As if some dread commitment was at hand.

"One morn I miss'd him in this custom'd Hall,  
 "And at the Oak,\* where he was wont to be,  
 "His Clerk came down, and answer'd to my call,  
 "But by yon steps, nor at the Oak was he.  
 "The next I heard (oh melancholy tale!  
 "On our profession what a foul reproach!)  
 "That he for forgery was confin'd in jail,  
 "And dragg'd (oh shameful!) there without a coach.

## HIS CHARACTER.

VULTURE, the arrant'st rascal upon earth,  
 At length is caught and into Newgate thrown.  
 Fair honesty disclaim'd him at his birth,  
 And villainy confess'd him for her own.  
 Grown old in sin, at no one crime dismay'd,  
 'Gainst Nature's cries he arm'd his callous heart;  
 For when his father was to death convey'd,  
 He growl'd— and damn'd the slowness of the cart.  
*Jack Ketch*, to show his duty to his friend,  
 Will soon confirm it with the strongest tie,  
 But on such ties what mortal would depend.  
 A rogue he liv'd, and like a rogue he'll die.  
 Now prest with guilt, he feels its sharpest sting,  
 Great his transgressions, and but small his hope,  
 He gave the sheriff (all he had) a ring,  
 He gain'd from justice (all he fear'd) a rope.  
 No farther seek his vices to disclose,  
 But leave the culprit to his dark abode,  
 There let him rest, till breaking his repose  
 The hangman summons him to Tyburn road.

The attorney was dirty, illiterate, poor, a rogue in grain; but to say this was not enough. Mr. Woty felt so strongly on the theme that he lavished upon it an illustration—the only one in the volume—and the poem concludes with a rough drawing of the gallows.

The last thirty years of the 18th century are rich in references to the profession. This was, indeed, the period

\* The Royal Oak, a public-house near the Hall.

when popular attention was first effectively directed to its affairs. Earlier attempts at regulation had been only partially and temporarily successful, but the Act of 1734 had reduced the body to small and manageable dimensions and laid the foundation of modern rules affecting the class. After nearly half a century's experience of its work, further changes were seen to be necessary. The better men in the profession were petitioning Parliament to take steps to exclude from it men unqualified by lack of education or character. Of external critics the judges were amongst the most severe, and the attorneys, once the favourites of the courts, now had little chance of success there. The very highwaymen were like-minded, if one may trust a modern interpreter. "I had no more liking for Baverstock," says Mr. Marriott Watson's hero, Dick Ryder,\* "than I should spend upon an Attorney, save that he was a fellow of spirit." The poets, then, only followed a fashion when they wrote as did Mr. Woty. The full-blooded denunciation of attorneys by the gentleman who concealed himself under the name of "Expertus" doubtless represents fairly the general feeling. "The Lawyers," a poem, which has survived only in *The Muses' Mirror*† is set "to the tune of the Georgians."

Of all professions on the Globe,  
The coifed gown and scarlet robe  
Most mis'ry do create ;  
Instead of soothing down your cares,  
They serve but to perplex affairs,  
And bring them to debate.  
  
Whether your cause be good or bad,  
Whilst there is money to be had,  
They'll still your suit maintain :  
It is the bus'ness of their life  
'Twixt greatest friends to stir up strife  
Whose quarrels are their gain.

\* *Galloping Dick*, p. 174.

† Vol. I., p. III (A.D. 1778).

There are such quibbles and such quirks  
 Between attorneys and their clerks,  
 Their Clients to confound ;  
 That all their study, day and night,  
 Is to make wrong appear like right,  
 And ring the changes round.

Since lawyers are such common pests,  
 Avoid them as you would the nests  
 Of hornets nearly flown ;  
 And whilst you live, beware of law,  
 It is the hungry lion's paw  
 That tears the flesh from bone.

But hold, my muse, let's not run on  
 As if we never would have done,  
 But seek what to defend :  
 Oh yes ! (in justice be it said)  
 They will (when all their fees are paid)  
 A reference recommend.

It is interesting to learn that the art of "smashing the lists," the practice of compelling litigants to compromise, or refer to arbitration, cases which it would be tedious to \*try, was known so long ago as 1778.

*(To be continued.)*

#### VIII.—STOCKBROKERS' RIGHT TO INDEMNITY.

THE case of *Ellis v. Pond*, which is reported in the March number of the *Law Reports*,\* is instructive as shewing that our tribunals may occasionally be confronted with the dilemma either of allowing the claim of one of the parties to a contract to be indemnified in respect of a loss which might possibly not have occurred but for a wrongful act of his own, or, in effect, of giving to the other damages for breach of the contract at a rate considerably in excess of the normal measure.

\* [1898] 1 Q.B. 426.

In *Ellis v. Pond* the question was whether a stockbroker who had wrongfully sold out his principal's stock before the arrival of the settling-day for which it had been bought, had any claim for indemnify against his principal for loss which had been incurred in consequence of a fall in the price of the stock since the date of the purchase. The majority of the Court of Appeal (Lords Justices Smith and Collins) considered that to acknowledge any right in the broker to indemnity under such circumstances would amount to allowing an agent to claim indemnity from his principal for the consequences of his own wrongdoing; but, as will presently be seen, to refuse an indemnity altogether was equivalent to granting the principal exemplary damages for the broker's breach of contract, since he was thereby placed in a more favourable position than he would have enjoyed had the contract been carried into effect. The method of settling the rights of the parties adopted by Lord Justice Rigby in the Court of Appeal, and by Mr. Justice Mathew in the Court below, would certainly seem to be more in accordance with the usual rule as to the measure of damages; and clearly if large quantities of stock have been purchased and a heavy fall in value has occurred previous to the wrongful sale—it is of course only in case of a fall in price that such a sale is likely to occur—it may, and probably will, be most material to the broker whether his claim to an indemnity is allowed subject to a deduction for loss caused to his principal through the wrongful sale, or is held never to have arisen at all. The whole question appears to turn upon the date of the accrual of the indemnity. If it is essential to the creation of such a claim that there must have been a previous breach by the principal of performance of his contract, then no doubt an indemnity cannot be claimed by the broker where, by breaking his own undertaking before the time arrives for fulfilment of the principal's promise, he has himself put it out of his principal's power to make such

a breach. If, on the other hand, it can be shewn that there are cases in which a claim to indemnity will arise, although there can be no breach of contract because there is no contractual relation, and that the relation between a stock-broker and his principal is, to some extent at all events, equivalent to the relations of the parties in such cases, there will, I submit, be a presumption in favour of the views held by the dissentient Judges.

The material facts in *Ellis v. Pond* were as follows:—The defendant, Pond, shortly before November 10th, 1896, the carrying-over day on the Stock Exchange, bought through the plaintiff, who was a broker on the Exchange, large quantities of Metropolitan District Railway stock, of which an amount to the nominal value of £105,000 had been taken off the market by the help of money supplied, for the most part, by the plaintiff. In respect of the stock thus taken up, all the Judges were agreed that the plaintiff was entitled to an indemnity, and it therefore may be dismissed from consideration so far as the present paper is concerned. In addition to the £105,000 stock, the plaintiff had on November 10th, by the defendant's instructions, carried over £35,000 stock, and purchased a further £10,000 at a price which may, with sufficient accuracy be stated to have been 29½ for each nominal £100, and this £45,000, according to the undisputed finding of the jury, he agreed with the defendant that he would not sell before the next settling day, November 26th. A heavy fall, however, occurring before that date, the plaintiff became alarmed at the state of the market, and on November 19th, after requesting instructions from the defendant and failing to receive any, he sold the stock at a price which may approximately be stated as 25. He then forwarded the "sold" notes to the defendant, who immediately wrote in reply returning the notes and stating that the plaintiff had no instructions to sell. On November 24th the plaintiff



issued a writ in the action, claiming to be indemnified by the defendant for the expense to which he had been put.

On the above facts Mr. Justice Mathew, before whom the case was originally tried, left to the jury five questions, of which, in view of the answer given to the first, only the first and last are of importance. The first question was, "Did the plaintiff agree not to sell the stock before November 26th?" Answer: "He did." The last question was, "If the stock had not been disposed of to Smith" (the jobber to whom the stock was sold at 25), "for what amount could the plaintiff have sold it?" Answer: "£28." It will be important to bear in mind that the jury found that 28 would have been the market price on November 26th, although they were invited to find that but for the wrongful sale, the price would have been above 30 on that day. On these findings Mr. Justice Mathew gave judgment for an amount, which was determined by allowing the plaintiff's claim to an indemnity, but deducting therefrom the loss suffered by the defendant through the wrongful sale—by allowing, that is to say, the broker's claim to the difference between the price of purchase, 29½, and the actual price of sale, 25, amounting on the entire sum to £2,025, and deducting as damages for the wrongful sale the difference between 25 and 28, the price obtainable on the 26th, amounting on the same basis to £1,350. On this computation it will be seen that the broker would receive from his principal a sum of £675. With this decision, when the case came before the Court of Appeal, Lord Justice Rigby agreed, but the majority of the Court held that the right to an indemnity did not arise until there had been a breach of contract by the principal, and that since the principal had not had an opportunity of refusing to accept delivery of the stock, the broker was not entitled to be indemnified. The upshot of the decision, of course, was that the broker lost, and the principal gained, £675 more

than would have been the case if the judgment of the Court below had stood.

Looking at the matter from a purely non-legal point of view, it must be admitted that the result was a little severe upon the broker. He was in a distinctly difficult position. On the 26th he might, under the regulations of the Stock Exchange, be compelled to pay for and take up the £45,000 of stock whether the defendant fulfilled his part of the contract or not, and in case of the fall in value continuing he would, if the defendant failed him, be saddled with a very heavy loss. As he had already supplied a large part of the money to take up the £105,000 stock he may possibly have thought that the defendant neither intended, nor was in a position to take up, the £45,000, if such a course became imperative, but was relying upon the occurrence of a rise in price above 29½ before the 26th, or at the worst, on the probability of being able to sell out before settling day and merely paying differences. But it is possible that had the fall in value continued a panic might have occurred and the stock have become unsaleable, when, if his principal had been unable to take up the stock personally, the broker would have found himself in the position of being called upon on settling day to pay down a sum of £13,000 and having a right to sue his principal for reimbursement—not a very satisfactory right if in the meantime he was unable to find the money and was in consequence declared a defaulter on the Stock Exchange. Of course that is not a probable result where transactions are in such a security as railway stock, but it is obvious that if there had been a fall of, say, ten points instead of four and a-half the broker might have been put to serious inconvenience. It is easy to say that prudence should have dictated to him that in purchasing such large amounts of stock it would be well to protect himself by making special stipulations as to his right to cover and to sell out in default of

receiving the cover. That, no doubt, would be the prudent course. But commercial men find that speed is essential to the successful conduct of business, and they prefer the risk of being involved in a possible legal difficulty to the practical certainty of losing a good bargain should they attempt to provide against the improbable contingencies which the caution of a lawyer might suggest. Having elected to take the risk the stockbroker had perhaps no great reason to complain if, on suddenly taking fright at the position into which he saw a possibility of drifting, the law proved to be a little hard upon him when he attempted to obtain, at a late stage of the transaction and without very much regard to the rights of his co-contractor, the protection for which from a legal point of view he ought to have bargained at the time when he entered into the contract. Nevertheless, since it is in the public interest that the principles of law should as far as possible be construed so as to harmonize with the necessities of commerce, it will, I hope, not be considered presumptuous if I suggest a few reasons for doubting whether the ultimate decision was entirely correct.

With the question whether the writ in *Ellis v. Pond* was prematurely issued, I do not propose to deal, because it is evident that in future actions of this kind that defect, if it is one, can very easily be remedied. The only other question of general importance appears to me to be: what is the effect of a wrongful sale upon the normal relations of a broker and his principal? In this connection it will be instructive to ascertain what was the actual damage which the defendant suffered in consequence of the broker's wrongful act. In the first place, it is to be observed that, if the defendant had been desirous of actually taking up the stock, he could have bought the same amount through another broker at some price between 25 and 28 at any time between November 19th and 26th. He was not bound

to take that course, but had he instituted proceedings for non-delivery of the stock on November 26th, his damages could not have been increased by his failure to do so.\* Supposing that the defendant had purchased the stock at 28 on the 26th, he would then have been in precisely the same position as if the original contract had been duly carried out, except that he would have been obliged to pay a small sum for commission, &c., on the second purchase, and that sum would have been the measure of the loss which he had sustained through the wrongful sale and the amount which he could have claimed from the broker as damages for breach of contract.

But assuming that after receipt and rejection of the sold notes on November 19th the defendant still expected that the plaintiff would offer to deliver the stock on November 26th, what, if the offer had been made, would have been the defendant's position? He would either have been obliged to take up and pay his broker for the stock, or he would have instructed the broker to sell out or carry over the stock, and would have been obliged to pay the differences. If he had elected to take up the stock he would have received a security worth, at the market price of the day, £28 per nominal £100, a total sum of £12,600, and would have paid his broker therefor at the rate of £29 10s., a total of £13,275—in other words, he would have paid £675 more than the then value of the stock. If the stock had been sold out or carried over, he would have paid as differences the same sum of £675, plus the broker's commission on the second sale, or commission and contango on the carry over, and this sum of £675 is, it will be observed, the amount which the broker would have obtained under the judgments of Mr. Justice Mathew and Lord Justice Rigby. The defendant's actual loss, therefore, from the wrongful sale was the difference between 25 and

\* *Samuel v. Rowe* (1892), 8 T.L.R. 488.

28, or 3 per cent. on the nominal value of the stock, with the very remote possibility of being unable to place himself in a position, by means of a second purchase, to retrieve his present loss of the difference between 28 and 29½ in case of a future rise in the price of the stock. But by the judgment of the Court of Appeal he in effect received the difference between 25 and 29½, or 4½ per cent. on the nominal value of the stock—a sum of £675 more than the amount required to place him in as favourable a position as he would have occupied had the contract been duly executed. An obvious result of the judgment is that the heavier the fall in the price of the stock the more will the wrongful sale be to the interest of a principal.

The most important point, then, to be ascertained would appear to be the precise period at which the stockbroker's right to an indemnity accrues. Lord Justice Smith was of opinion (p. 439) that the broker's claim would be found to be a case of an agent asking his principal to indemnify him against the consequences of his own wrong. But, as has been shewn, the sum which the broker was claiming was the identical sum to which he would have been entitled if he had sold rightfully on November 26th,\* for Lord Justice Smith himself points out (p. 436) that the broker does not dispute that he is liable to his principal for the damages that the latter may sustain by reason of his breach of contract; and therefore if it can be shewn that a breach of contract is not necessarily a condition precedent to a right to an indemnity, I would suggest that the broker's claim was a claim to be indemnified for what he had done rightfully, namely, the purchase on November 10th at 29½, with a deduction for what he had

\* By the custom of the Stock Exchange the broker would have been entitled, even after carrying over, to sell out the principal's stock if he had delivered an account shewing the amount of differences due and the principal had not put him in funds to pay them: *Davis v. Howard*, (1890) 24 Q.B.D. 691.

made by the sale on the 19th and the damage which his principal had suffered by that sale being wrongful.

Before coming, however, to that question it may be worth while to ascertain whether after the sale on the 19th the defendant continued under any liability to the jobber. As to this Lord Justice Smith says (p. 440): "By selling to Smith stock of similar amount to that in respect of which the plaintiff had contracted with the jobber to pass to him the name of a purchaser upon the settling day; the broker (the plaintiff) by passing Smith's name performed his contract with the jobber; subject of course to his liability to make good to the jobber any difference there might be between the contract price and that agreed to be paid by Smith. That the contract with the jobber was thus fulfilled appears to me clear, and he had no claim or remedy whatever against the defendant, the original principal. The real truth is, that when the broker (the plaintiff) sold against the defendant, upon November 19th, he substituted Smith as purchaser in the defendant's place, and by passing Smith's name to the jobber, the broker's contract with him was performed." And Lord Justice Collins says (p. 458): "But as a great point was made by the plaintiff's counsel that the act of the broker in selling could not affect his right to the indemnity claimed unless he had thereby debarred the jobber from claiming performance of his contract, I will add that I think the inference is inevitable, that by the sale 'to close,' he did so debar the jobber. . . . The object of a sale 'to close' is to close the whole transaction with the jobber as well as with the customer;\* and if the name of a new vendee is given by the broker and accepted

\* It is submitted that the words "to close" are really used to differentiate the transaction from a "bear" sale which would be a sale "to open," and do not, and are not intended to make any alteration in the rights and liabilities of the jobber.

by the jobber, the latter will perform his contract by delivering to the new vendee."

But what was the right of the jobber previously to the sale on November 19th? It was to receive payment at the rate of £29 10s. for the stock which he was to deliver, and for such payment he was at law entitled to proceed against either the broker or his principal. When he accepted the liability of Smith instead of the liability of Pond he surely accepted it only to the extent of 25, and reserved his rights as to the other  $4\frac{1}{2}$  per cent. It is clear that he did so against the broker, and what had occurred to destroy his right against the principal? If the broker had resold the stock on the 19th to the same jobber from whom it had been bought on the 10th, can there be any doubt that the jobber could have claimed the  $4\frac{1}{2}$  per cent. from the defendant? And whether the name of a fresh purchaser was given to him on the 26th, or the stock was resold to him at 25 on the 19th, can surely make no difference to the jobber's right as to the  $4\frac{1}{2}$  per cent. If the sale on the 19th had been by the defendant's instructions, it is obvious that the jobber would have had a valid claim against him, and why should the agent's wrongful act affect the position of the contracting party whose agent he is not? The sale was within the apparent scope of the broker's authority, and there was no obligation upon the jobber to inquire whether it was in fact rightful or not, and there would surely have been no such obligation even if the stock had been resold to him and had been identifiable as the actual stock which the broker had previously bought. The rightfulness or wrongfulness of the sale was, it is submitted, a matter to be settled between the principal and his agent—a matter for which the principal would have a right of recourse against his agent, but which could not affect a third party's rights against the principal. And if the jobber had succeeded in such an action against the principal, and the principal had

in turn taken proceedings against the broker, the measure of damages would clearly have been the difference between the 25 and 28, and not between the 25 and 29½.

The majority of the Court assumed that the case was concluded by the decision in *Duncan v. Hill*,\* but there is nothing to shew that the sum claimed in *Duncan v. Hill* was not a sum equivalent to the difference between 25 and 28 in *Ellis v. Pond*, and that the refusal of an indemnity in the former case did not place the defendant in the precise position he would have been in had the contract been completed. Indeed, the statement in the argument of counsel for the defendant, "that if the plaintiffs could succeed in this action, the defendant would be entitled to recover back the same amount from them in an action for breach of their duty," leads to the conclusion that that was the case, the argument of the opposing counsel on this point appearing rather to relate to the general principles applicable for fixing the measure of damages than to be a denial of the fact that the sum in question was the correct amount in the particular instance. But the real bone of contention in *Ellis v. Pond* was the additional sum constituted by the difference between 28 and 29½ on £45,000 of stock.

To come now to the question of the period at which the right to an indemnity becomes effective, it will be observed that the members of the Court of Appeal were very much at variance on the point. "If the plaintiff," said Lord Justice Smith (p. 440), "does not establish that the defendant has refused or neglected to perform his contract with him, in my judgment he clearly fails in his action for indemnity, for it is only upon proof of such refusal or neglect that the right to indemnity arises." "I think," said Lord Justice Collins (p. 458), "the simple ground which I have stated,

\* (1873) L.R. 8 Ex. 242.



namely, that the plaintiff did not prove, and, indeed, put it out of his power to prove, any breach by the defendant is decisive of the case." "Here," said Lord Justice Rigby (p. 453), "the plaintiff's claim for indemnity does in my judgment quite plainly arise out of the original contract, and not out of the attempted closing of the accounts by the wrongful sale, which transaction is only relevant in so far as it may be available as a defence or as a separate ground for damages." Which of these opinions is correct?

The position which a stockbroker occupies in relation to his principal is, it has been held, that of a trustee,\* and his right to indemnity clearly arises, as does that of a trustee, by implication of law and not by express contract. The right of an express trustee to be indemnified out of the trust estate is certainly not dependent upon any breach of contract; for, unless the maker of the trust is alive and is also a *cestui que trust*, there is no one towards whom the trustee stands in a contractual relation. The right, is, it seems, in this instance inherent by operation of law in the person who undertakes liabilities on behalf of another from the moment when he puts himself into that position, and why should there be a difference in this respect between the position of an express and an implied trustee? It is true that in the latter case the right creates a personal liability, while in the former it is attached more particularly to property, though there may be personal liability as well.† But the difference in liability does not seem to afford a reason for making a distinction in the time when the right accrues, and since we find that in one case it must accrue *ab initio*, while in the other it may or may not, it is, I submit, a fair presumption that it does accrue *ab initio* in

\* *Ex parte Cooke*, (1876) 4 Ch. D. 123; *Knatchbull v. Hallett*, (1880) 13 Ch. D. 696.

† *Yervis v. Wolferstan*, (1874) L.R. 18 Eq. at p. 24; *Fraser v. Murdoch*, (1881) 6 App. Cas. at p. 872.

the second case as well as in the first, especially if the result of the presumption is to obtain a fairer settlement between the parties. If that is so, then immediately a man assumes a position at the request of another which places him under a liability that otherwise would have fallen upon that other, and that liability either has been paid or is a definite future debt of ascertained amount, it would seem that the party who is primarily liable is entitled to be indemnified in the present, or to the declaration of a right to an indemnity in the future, at the hands of the party in whose place he stands.\*

The liability which the broker assumed on November 10th was not a liability to pay differences in case the stock was not taken up on the 26th. It was a liability to pay 29½ per cent. for the stock on the settling day, and the jobber would have been perfectly entitled to insist on the broker's carrying out his undertaking to the letter, and under ordinary circumstances would probably have done so, if he had had the stock on his hands and had been unable to get rid of it elsewhere on the 26th. The broker had no right to enforce any other terms on the jobber; the principal could demand nothing else from the broker.† There might be a breach of the contract, or the parties might enter into some new arrangement which would dissolve the former one; but until the actual occurrence of one of those contingencies the performance of the contract must, it is submitted, be contemplated as its natural and probable result, and that being so, there was, on the

\* *Fraser v. Murdoch*, *supra*; *Evans v. Wood*, (1867) L.R. 5 Eq. 9; *Hodgkinson v. Kelly*, (1868) L.R. 6 Eq. 496; *Wooldridge v. Norris*, (1868) L.R. 6 Eq. 410; *Hobbs v. Wayet*, (1887) 36 Ch. D. 256; *Wolmershausen v. Gullick*, (1893) 2 Ch. 514. In *Hughes Hallett v. Indian Mammoth Gold Mines Co.*, (1882) 22 Ch. D. 561, a declaration of indemnity was refused on the ground that the liability was not ascertained inasmuch as it was not clear that any further calls would be made on the shares which the plaintiff was holding.

† Bramwell, L.J., in *Thacker v. Hardy*, (1878) 4 Q.B.D., at p. 691.

principle of *Wolmershausen v. Gullick* and the other cases cited, a definite and ascertained liability from November 10th onwards, in respect of which the broker was entitled to an immediate declaration of a right to indemnity. The defendant's liability to pay for the shares, and to indemnify the person who was primarily liable to pay, was an incident of ownership,\* and the beneficial ownership of the stock passed to the defendant on November 10th when the contracts were effected. In any case to hold that the right does not arise until there has been a breach of contract, is to reduce an indemnity to a claim for damages for breach of contract, but the distinction between the two remedies was clearly stated by Lord Justice Bowen in the *Birmingham and District Land Co. v. London and North Western Railway Co.*† “But it is quite clear to my mind that a right to damages, which is all that the defendants have here, if they are entitled to anything, is not a right to indemnity as such. It is the converse of such a right. A right to indemnity as such is given by the original bargain between the parties. The right to damages is given in consequence of the breach of the original contract between the parties. It is an incident which the law attaches to the breach of a contract, and is not a provision of the contract itself.”

The case suggested by Lord Justice Mellish in *Scrimgeour's* case‡ appears to be exactly in point, and is, I submit, the correct view. “I am not aware,” he said, “that there is any difference between the purchase of stock or shares and the purchase of wheat or cotton. If a broker has purchased a quantity of cotton, or other goods, and has paid for it out of his own money”—the personal liability to the jobber comes, I suggest, to the same thing—“and has

\* *Hodgkinson v. Kelly*, (1868) L.R. 6 Eq., 496.

† (1886) 34 Ch. D., at p. 274; see also *Fry, J.*, at p. 276.

‡ *Lacey v. Hill, Scrimgeour's Claim*, (1873) L.R. 8 Ch. 921.

got an order from his principal that he may sell for the purpose of recouping himself the amount which he has actually paid, but the principal has told him: 'I think you had better not sell till the 1st of August,' and he, being afraid the market will fall, sells a fortnight too soon; that, upon the ordinary principles of law, would not entirely deprive him of his right to recover. He would still be entitled to recover the money he had laid out on behalf of the principal; but the principal would have a counterclaim against him for damage, if any, which might have resulted from the fact of selling a fortnight earlier than he ought to have done."

SPENCER BRODHURST.

## IX.—OBITUARY: THE RIGHT HON. SPENCER HORATIO WALPOLE, Q.C.

IN this year's law list, but for the last time, at the head of the non-official members of the Bar, appears the name of the Right Hon. S. H. Walpole as the senior Queen's Counsel, according to the date of his appointment, by no less than eight years. It is a very long time indeed since the late Mr. Walpole actively exercised his profession, though he remained strongly attached to it until the close of his life, and held to the friendships which he had formed at the Bar, of which, however, death had severed by far the greater number, before he himself was called away.

Even the political career of Mr. Walpole may be said to have passed into history some while since. It is now nearly thirty years since the great leader of his party, the Earl of Derby, died at the age of three-score. His Government had fallen in the previous year: before this fall Mr. Walpole had ceased to be a Home Secretary: and never afterwards did he

return again to office as a cabinet minister. And, therefore, though men remember the fact that he was Secretary of State for the Home Department, the details of his doings have probably passed from their minds, and in his retirement it may have been forgotten how great was the power which he formerly wielded. Time was when his least word was anxiously scrutinised as the responsible utterance of a member of Her Majesty's Government, or as an indication of declared policy on the part of the Opposition by one of the leaders of it. Once indeed the Government of Lord Palmerston was believed by those whose knowledge was greatest to be in Mr. Walpole's power, and the House of Commons waited upon his lips to hear what his decision regarding its fate would be. For Lord Palmerston had declared that if Mr. Walpole's amendment to a motion which Mr. Stansfeld had proposed on the subject of the national expenses were carried, it would be interpreted as a vote of censure against the Ministry. Mr. Walpole decided not to thrust home: and avowed with all simplicity that the leader of the party with whom he was proud to be connected did not desire at that juncture to displace Lord Palmerston. Mr. Walpole accepted the responsibility of this decision as his own. "I know," said he, "the course I am now taking may not be agreeable to some of those with whom I would wish always to co-operate" (it was not agreeable to Mr. Benjamin Disraeli), "but I am placed in so unusual and unexpected a position that I must bear all the responsibility of the course which I take. And if anybody is to blame for that course, the blame must rest with me alone. Nevertheless I believe that upon the whole the course I propose to take is a course most conducive to the well-being of the country. For I think it not desirable to attempt to disturb the Government at such a moment as the present, when I have no reason myself to say that the Government do not

deserve the confidence of the country." (Hansard, Vol. CLXVII., p. 386.) It was immediately recognised that all further opposition was useless: and Mr. Disraeli's advice was that the members should all go home. Mr. Walpole was Home Secretary three times in all: viz.—from March to December, 1852, from February, 1858, to March, 1859, and from June, 1866, to May, 1867. He was a faithful follower of Lord Derby while he remained in his cabinet: but when he disapproved of his leader's conservative Reform Bill of 1859 he did not hesitate to say so, nor to emphasise his opinion by resigning. He was throughout a straightforward and honest politician: he was not a statesman nor strong in administration: but he was a true defender of the principles which he believed to be right, and a loyal servant of Church and State.

If, as we have said, the great age to which Mr. Walpole lived after his retirement from public life resulted in the memory of his political doings having already largely faded from the public mind, how much more is this the case with regard to his legal attainments at the Bar! For these date back to a yet earlier period: since Mr. Walpole upon his first acceptance of political office finally retired from his practice at the Bar. This was in 1852. But there will be many who think that the period in which he exercised his profession was the most successful part of his life. Here he was a great power indeed. He was one of the chief leaders in the Rolls Court. His practice there became so great that he devoted almost his entire energies to that Court alone. Sir John Romilly was at that time Master of the Rolls: and practising before him there happened to be an exceptionally brilliant Bar. Not only were there such peculiarly bright stars as Bethell and Roundel Palmer, two of the most brilliant equity lawyers of the century, both destined to occupy the woolsack under the names of Westbury and Selborne respectively, at later periods: but

there were many others, such as Roupell, Lloyd, Rogers, and Kinglake, of conspicuous ability. Among them Mr. Walpole more than held his own: and he appeared in many of the most important equity cases of his day. In *Re the Norwich Yarn Company* (13 Beav. 427) he had Bethell and Roundel Palmer both against him: and Bethell tried in vain to argue that "his learned friend Mr. Walpole had no *locus standi* and ought not to be heard": he *was* heard. See also *Mount v. Mount* (13 Beav. 335); *Byrne v. Norcott* (*Id.* 341); *Douglas v. Andrews* (14 Beav. 347); *Whicker v. Hume* (*Id.* 809); *Harris v. Farwell* (15 Beav. 31); *Blakeney v. Dufaux* (*Id.* 40); *Laurie v. Clutton* (*Id.* 65); *Cockell v. Taylor* (*Id.* 105); *Cooke v. Lamotte* (*Id.* 239); and *Coulthurst v. Carter* (*Id.* 425), in all of which Mr. Walpole appeared as counsel. And he was not peculiarly young even then. When he retired from the Bar in 1852, he had already practised there for one-and-twenty years and was forty-six years of age.

His life may be divided into four periods. The first the period of education, spent chiefly at Eton, and Trinity College Cambridge, ending by his call to the Bar in 1831. This was a period of 25 years. The second the period of his practice at the Bar—21 years. The third the period of his official and political career—15 years. And the fourth the period of his retirement—31 years. For, when he passed away at Ealing in May of the present year, it was just 22 years after he had reached the allotted span of three-score years and ten.

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## X.—LEGAL EDUCATION FROM A "COACH'S" POINT OF VIEW.

### I.

**I**N his essay on Bentham, John Stuart Mill, comparing him with those negative philosophers who so largely influenced his age, says: "They were purely negative thinkers, he was positive: they only assailed error, he made it a point of conscience not to do so until he thought he could plant instead the corresponding truth." \*

The article on "Legal Education," by the Lord Chief Justice, in the last number of this Review, brings to mind this forcible antithesis; for, excellent though the article is in its purely critical aspect, one seeks, but seeks in vain, for any working scheme to substitute for the present methods of the Council of Legal Education. The only suggestion made appears to be that the teaching functions of the Council should be handed over to the proposed new University, largely under the control, it is true, of the Inns of Court, but, of necessity, not exclusively so. But surely this is a bourn the dread of which should make "us rather bear those ills we have, than fly to others that we know not of."

Why should the Inns of Court so lightly surrender their unique position as a school of law? How such surrender to a newly constituted and heterogeneous body, without even such practical experience as may be grudgingly accredited to the present Council, should solve the problem, are questions which no attempt is made to answer.

For our part we uphold the present institution of the Inns of Court as an educational body. We should view

\* "Dissertations and Discussions," Vol. I., p. 331.



with deep regret any merging of its identity in a brand new University scheme; we would seek rather to diagnose its present ills and to prescribe for them to the best of our ability, in the hope, however faint, that some of our suggestions may fall on fruitful soil.

There is little doubt that the seat of most of these defects is to be found in the *personnel* of the Council of Legal Education. So long as the present constitution of this body continues, small hopes of any beneficent changes can be cherished. It is now composed of some of the most eminent men in the profession, but by reason of their age and, one might almost say, by reason also of their very eminence, they are out of touch with latter-day requirements. They are a generation too old, and should be leavened by a liberal addition, say one-third, of men of not more than ten years' standing at the Bar.

On the very threshold of the subject we are confronted with a difficulty which does not appear to have been sufficiently appreciated. It arises out of the unique position of the Inns of Court as the great qualifying school of English law, not only for the United Kingdom, but for the British Empire, and, to some small extent, for the subjects of other countries. The students of our Inns comprise, in addition to those qualifying for practice, such diverse elements as country gentlemen seeking for a smattering of the law which they are called upon to administer as Justices of the Peace; members of the Home, Colonial, and Indian Civil Services seeking promotion; officers of the army in quest of colonial appointments; and men of so many varieties of speech from all corners of the earth, that a stranger dining in one of our Halls might well imagine that the pentecostal gift had been vouchsafed us. From this it may readily be seen how conspicuous by their absence are all the elements of cohesion, and how unavoidable it is that a large number of students can only

intermittently pursue their studies. Herein, perhaps, lies the greatest obstacle to any ideal system of legal education.

Stringent regulations as to attendance at lectures and reading in chambers would tend to close the profession to all but those intending to follow it for a living; and against this there is undoubtedly a strong, though we venture to think a somewhat irrational sentiment, not unconnected, perhaps, with the coffers of the various Inns.

In spite of this, the necessity of eating a certain number of dinners before call has long survived the useful purposes of its institution, and remains now only as a trap for the unwary and as a great hardship to those men who, having passed their examinations, cannot eat the necessary dinners in the time at their disposal. Only recently a member of the British Consular Service in China passed all his examinations and kept all his terms save two. Though he obtained a strong recommendation from the Foreign Office his Inn refused to dispense with the eating of these six dinners, and he has been obliged to return to China and postpone his call for a period of five years.

We do not suggest that this dining qualification should be abolished, but we feel strongly that the educational course should be spread over the whole three years, and that the dining should be ancillary to that course as in olden times, not as now a principal requirement. That a man should not be called because he has not completed his educational course is consonant with reason and would have appealed to our Consular student: that he should not be called after completing that course only because he has not eaten enough dinners led however to his expressing his opinion of the whole institution forcibly in Chinese, in which he was proficient.

Before dealing with the present system of education in detail, the state of affairs as it exists to-day may be shortly summarised. At the present time, though excellent and

elaborate courses of lectures are provided, a student need attend none of them ; he may (and many do) pass all his examinations at any time, even within three months of his admission ; he is not obliged to read in Chambers ; but he must eat dinners in Hall for three years !

The educational course now prescribed, comprises Roman Law, Constitutional Law and Legal History, Real and Personal Property, Common Law, Equity, and Evidence, Criminal Law, and Procedure Civil and Criminal. There are also Lectures on Jurisprudence and International Law, but these are not pass examination subjects.

To this system there are two formidable objections. In the first place, attendance at the lectures is quite optional, and there are no restrictions as to the courses which may be attended at different stages. A student, if sufficiently industrious, may attend some thirty-three lectures a week, thereby not uncommonly becoming thoroughly confused ; or, if sufficiently idle, may elect to ignore them altogether, and yet under the *agis* of a coach, succeed in passing his examinations by a shorter and less laborious route.

Our second objection is one of far greater importance ; the teaching of theoretical law is practically neglected, and what there is of it is not kept distinct from the teaching of practical law. The common experience of the Bar coach is that this makes for the ruin of sound legal scholarship, and tends to confusion of thought by requiring a practical knowledge of men who have never grasped the elementary principles of law. Innumerable illustrations of this defect which have come to our personal knowledge might be given were they not more fitted for the pages of a comic journal than for those of a serious review.

It is notorious that the teaching of theoretical law has been largely neglected in this country. Austin, writing in 1834, says : " In order to enable young men preparing for the profession to lay a solid basis for the acquisition (in the

"office of a practitioner) of practical skill, and for "subsequent successful practice, an institution like the "Law Faculty in the best of the foreign universities "seems to be requisite: an institution in which the general "principles of jurisprudence and legislation (the two "including ethics generally), international law, the history "of the English law (with outlines of the Roman, Canon, "and Feudal, as its three principal sources), and the actual "English Law (as divided into fit compartments), might "be taught by competent instructors."

The writings of this earnest apostle of systematic legal training have borne at least some fruit—to-day a bar-student must pass examinations in Roman Law and Constitutional Law and Legal History, but for either of these a man of average ability can be successfully coached in four weeks or thereabouts!

Such a theoretical course as that indicated by Austin should cover the first year of the student's course, at the end of which and not before, he should be examined in (a) Jurisprudence, (b) Roman Law, and (c) Constitutional Law at least. As to this course, the recommendation of the Lord Chief Justice that the Inns of Court should be "liberal in accepting the *testamur* of teaching authorities outside their own control" might well apply.

The second year might be devoted to the study of the general principles of municipal law with Stephens' admirable Commentaries as the ground work; expanded by the study of certain works on principles, such as those of Sir Frederick Pollock, Sir William Anson, Goodeve and Snell.

Special subjects of practical importance, such as those now lectured on—the Law of Vendors and Purchasers, Specific Performance, Carriers—should form the final course, and some of these subjects might well be optional.

The attendance at a certain proportion of these lectures should be made compulsory, and might be largely increased by re-introducing the lecture-prizes which used to be offered a few years ago for competition amongst students who had attended the lectures regularly.

To do the present readers and assistant lecturers justice there is little doubt that they have largely removed the necessity for a coach in the case of men who are able to attend their lectures. But the secret of a coach's success lies in his personal influence; it is the need of personal interest and of personal contact between the teacher and the taught that will ever create a demand for coaching. This demand the Council has it in its own power to meet by increasing the number of the junior lecturers and placing them rather in the position of tutors, to each of whom a certain number of students might be assigned.

As to reading in Chambers, many barristers of large experience still hold that the old system of reading in Chambers without examination was after all the best. Without agreeing altogether with this opinion, we must say it is astonishing that whereas solicitors are required to see practical work generally for five years, a barrister, whose written opinion or advice can shield a solicitor from responsibility, is not required to have a single year of such experience!

It is true that a great deal of such reading is commonly sheer waste of time. A man in a very large practice cannot give adequate attention to his pupils, whilst on the other hand, men frequently take pupils whose practice does not justify their doing so.

But the remedy for this is not far to seek. Let each Inn keep a tablet of those barristers who, having applied to the Council, have been approved for this purpose. No barrister should be allowed to take more than a certain number of pupils, and his certificate that the student has attended

regularly and has worked satisfactorily for at least one year, should be required as a condition precedent, to call, in the case of those students adopting the Bar as a profession. A somewhat similar suggestion is made by Mr. Robert R. Pearce in *A Guide to the Inns of Court and Chancery*. (London, 1855.) He says: "Now it would obviously tend very much to invigorate the Inns of Court, to promote their utility, extend the benefits of the newly-established lectures, and restore the ancient discipline of these houses, if an experienced special pleader and conveyancer, or equity draughtsman were appointed by the Bench in each Inn at liberal salaries, with liberty to practise at their discretion, every student being obliged (unless under very special circumstances) to attend the Chambers of either of such pleaders or conveyancers for one year, paying the sum of fifty guineas to the funds of the Society; an examination being held once a year and a certain number of successful candidates receiving back the fee paid on entering upon this course of study." (p. 78.)

Nothing is more certain than "that our ancestors did not entertain the notion that the only necessary qualification for the practice of the law . . . should be a membership for three years of one of the four Inns of Courts, testified by the consumption of some forty or fifty dinners." \*

Even if the course for qualification should be thus somewhat lengthened, students of to-day would have little to complain of when comparing their lot with that of their predecessors. Dugdale tells us that in the time of Charles II. students after keeping all their exercises (that is attending a large number of moots), and after the expiration of seven or eight years, could be admitted to

\* "Legal Education," a Tract by H. R. Bagshawe, M.A., London, 1858, p. 4.

"the degree of Utter Barristers" by the Bench, but that this did not entitle the barrister to plead until the lapse of two years, during which period he was not allowed to wear a Bar Gown in Westminster Hall, or to practise the law, but was compelled to continue the exercise of "mooting" in the Inns of Chancery.\*

If there were no examinations then, the course devised was far more exacting even than that which we have sketched, and that there were legal giants in those days, the direct outcome of this rigorous training, is common knowledge.

H. DRYSDALE WOODCOCK.

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## II.

Two important articles on the subject of reform in legal education have appeared in the *Law Magazine* for February and May from the pen of Mr. Montague Crackanthorpe and the Lord Chief Justice respectively, in which the utilization of the proposed new teaching University for London to this end is advocated. Both these distinguished writers have purposely confined themselves to general propositions, making no attempt to work out the details of a scheme for accomplishing the desired result; but now that the London University Commission Bill has been read a second time in the House of Commons, it seems desirable to consider how the Law Faculty in the re-constituted University might be utilized for the purpose proposed.

With this view let it be assumed that the advocates of reform have proved their case, and let it be taken for granted (1) that the present system of education is defective and that a change is desirable, and (2) that the change should take the direction of combining existing institutions with the law school in the new teaching University. Before,

\* Dugdale's "Origines Juridicales," 2nd edition, 1671, p. 203.

however, proceeding to discuss how the desired result can be brought about, we ought to go a step or two further and lay down two more general propositions, namely:—(3) that the new law school must provide for the needs of the students of both branches of the profession, and (4) that if it is to exercise any control over the education of legal practitioners it must itself be principally controlled by practitioners.

Assuming then that these premises are granted, the question arises, How are we to put theory into practice? Now it is submitted that the first step should be the appointment of a committee, to whose hands the control of the law school of the University should be entrusted. This committee, it is suggested, should be formed of representatives of the Senate of the University, the Inns of Court, and the Incorporated Law Society, each of whom should appoint one-third of its members. The committee might, if desirable, be actually appointed by the Senate, one-third of the members, however, being nominated for that purpose by the Inns of Court and the Law Society respectively, but at any rate the two latter bodies should have between them a preponderating voice in its deliberations, and the Law Society should have an equal voice with the Inns of Court. The number of law students who enter the solicitors' branch of the legal profession is considerably larger than that of those whose objective is the Bar; and it is right, therefore, that the Law Society should have at least an equal voice in all that pertains to their education and admission.

With the committee so appointed would rest the preparation of the course of study, of the syllabus of the examinations, the appointment of the lecturers, tutors and examiners, and so forth. Then the requisite powers ought to be obtained from Parliament, if necessary, to entitle every student who conformed to the prescribed regulations



not only to the law degree of the University, but also to admission to the ranks of the one or other branch of the profession as a practitioner.

The question then arises how the course of the students' preparation might be moulded, so as to make it suitable for this purpose. Now under the present system anyone intending to be admitted a solicitor is required to be articled for (generally speaking) five years to a practising solicitor, while anyone desiring to become a barrister must pass three years as a member of an Inn of Court, each being, in addition, required to pass certain examinations held by the Law Society and the Council of Legal Education respectively. Suppose that instead of this the student preparing for either branch of the profession were required to attend the new law school for a stated period—say, two years, during which he would attend the lectures or classes of the University tutors. In connection with these he would be required to pass prescribed examinations,—let us say an examination in Jurisprudence at the end of the first six months of his course, another in Constitutional Law, Legal History, and Roman Law, at the end of the first year, and a third in the Elements of English Law, at the end of the second year. Having passed through this course the student whose objective was the Bar might be required to spend a period, say, of two years, in the chambers of a practising barrister, while the student desiring admission on the Roll of Solicitors should be articled to a practising solicitor for a like time. At the expiration of this further period of practical work he might be required to pass a final examination of something the same character as the present Bar Final or Solicitors' Final, as the case may be, and after having obtained his certificate he should then be entitled, not only to his University degree in Law, but to admission as a practitioner as well.

\* It is not suggested that attendance at the University Law School should necessarily for some time to come at any rate be the only avenue to admission as a practitioner. Both the Inns of Court and the Law Society might, if they chose, continue to hold their examinations as at present; for those who preferred to adhere to the existing system. Modifications would also doubtless have to be made to meet the case of graduates at the older Universities, but this need occasion no very great difficulty. Nor need the University be limited to conferring its degrees only on those who passed through the suggested course. It might, as London University does now, confer its degrees on those satisfying its own requirements, but a degree unless obtained in the manner suggested above, would as now, be ornamental merely, that is to say, it would confer no right to practice. The Doctor's degree also might be left entirely in the hands of the University.

One important aspect of the matter still remains to be dealt with, namely, the financial aspect. At present the Law Society derives a large portion of its revenue from the examination fees paid by students, and it could not, or at any rate would not, consent to any scheme which would have the effect of materially diminishing its receipts in this respect. Probably also the Inns of Court would take up a similar position. Some arrangement would therefore have to be made for sharing the examination fees in the proportion in which the various bodies concerned were interested. This, however, one would think ought not to be incapable of equitable adjustment.

The foregoing does not pretend to be anything more than a rough outline, inviting discussion, and improvements will no doubt suggest themselves to others, but some attempt ought to be made before the opportunity now offered is lost, to plan out a means of carrying into practical effect a scheme of reform which, it can hardly be doubted by

anyone acquainted with the subject, would greatly contribute not only to the benefit of the profession, but to that of the public at large.

WALTER G. HART.

## XI.—CURRENT NOTES ON INTERNATIONAL LAW.

### The War between America and Spain.

(I.) *The Commencement of the War* : It is a little difficult to say what constituted the actual beginning of the war. For all practical purposes the resolution of Congress (*Times*, 20th April) amounted to a suspension of friendly relations. On the 20th April the Spanish Ambassador at Washington after receiving an intimation of the resolution, asked for his passports. (*Times*, 21st April.) On the 21st April the Spanish Government formally broke off diplomatic relations by a note addressed to General Woodford virtually inviting him to leave the country. (*Ib.*, 22nd April.) This step forestalled by a few hours the communication to Spain of the President's *Ultimatum* which comprised a "formal demand of the Government of the United States that the Government of Spain should at once relinquish its authority and government in the island of Cuba, and withdraw its land and naval forces from Cuba and Cuban Waters," and that "if by the hour of noon on Saturday next there should not be communicated a satisfactory response to this demand . . . the President will proceed without further notice . . . to carry the same into effect." (*Times*, 22nd April.)

Actual hostilities commenced on the 23rd April by the capture of the Spanish merchant vessel *Buenaventura*. (*Ib.*, 25th April.) It was not, however, till a day or two later that the formal Declaration of War by the United

States was embodied in a Bill in accordance with the requirements of the Constitution, and passed by Congress. But this document purported to be retrospective and declared "That war be and the same is hereby declared to exist, and "that war has existed since the 21st April, 1898, including "the said day, between the United States and Spain." The declaration was subsequently duly notified to foreign governments. (*Times*, 26th and 27th April.) The view that a state of war existed, even prior to the date of the Declaration, is of course in accordance with modern theory and practice, and appears to have been rightly acted upon by the American Prize Court in their subsequent condemnation of the *Buenaventura*. (*Times*, 12th May.)

(II.) *Declarations of Neutrality by Neutral Powers*: Most neutral States made formal announcements of neutrality shortly after the outbreak of war. (*Times*, 27th April.) Most of these agree in an avowal of an intention to maintain a strictly neutral attitude, a more or less general prohibition against their territory or waters being made the basis of belligerent operations, and a warning to their own subjects as to violating the rules relating to blockade and contraband. The German Government issued a semi-official statement that it would not at present publish a formal Proclamation (27th April). The Austrian-Hungarian Government did not think it necessary to publish a Proclamation at all, the Hungarian Premier pointing out that only on three occasions during the last half century had such a formality been required. (*Times*, 13th May.)

The British Proclamation is embodied in a special issue of the *London Gazette*, 26th April. It is a lengthy document. The most noteworthy point is that it re-affirms as a substantial part of the duty of a neutral government, the observance of the three famous rules as to "due diligence" embodied in Article 6 of the Washington Treaty of 1871.

This is rather a blow at the opinion commonly held by text-book writers that the rules went too far and ought not to be taken as a precedent for the future. The Proclamation then proceeds to set out in detail the main provisions of the Foreign Enlistment Act, 1870, and concludes with a general warning addressed to British subjects, against doing anything "in violation or contravention of the Law of Nations," and more especially by breaking blockade or carrying contraband. The most interesting document contained in the *Gazette* is a letter from the Home Secretary to the Lords of the Admiralty which enunciates the "24 hours' Rule" as regards belligerent ships in British ports, and then proceeds to declare that: "No ship of war of either belligerent must hereafter be permitted, while in any port or roadstead subject to the jurisdiction of Her Majesty, to take in supplies, except provisions and such other things as may be requisite for the subsistence of her crew, and except so much coal only as may be sufficient to carry such vessel to the nearest port of her own country, or to some nearer destination, and no coal shall again be supplied that ship in any port under the jurisdiction of Her Majesty, without special permission, until after the expiration of three months from the time when such coal may have been last supplied to her within British waters."

The first practical application of the self-enforced doctrine of "due diligence" occurred in the refusal of the Government to allow the United States torpedo-boat *Somers* to take in a crew recruited in this country. As a consequence, the United States authorities deemed it preferable to leave the vessel laid up in Falmouth Harbour until the close of the war. (*Times*, 27th April.)

In July a further difficulty arose in connection with Admiral Camara's squadron which touched at Port Said *en route* for the East. The Egyptian Government, acting of course under British orders, prohibited the supply of any

coal to the fleet, except what was necessary to take the ships to the nearest home port. It also forbade the fleet to coal even from its own colliers within Egyptian territorial waters. (*Times*, 1st and 2nd July.) The squadron passed through the canal, but was immediately afterwards summoned back, and at the request of the authorities left Port Said within 24 hours. Three torpedo-boats were allowed to take in coal on a written guarantee by the Admiral that they would forthwith return to Spain. (*Times*, 6th and 7th July.)

Incidentally, an interesting question arises as to whether the supply of coal and provisions to belligerent ships in British ports, constitutes the criminal offence "equipping" a ship within the meaning of the Foreign Enlistment Act, 1870, sects. 8, 10, and 30.

It seems pretty clear that this is so, except in so far as it is done with "the licence of Her Majesty." (See correspondence in the *Times*, 26th April.) It is difficult to see how the Home Secretary's letter above referred to can be deemed to amount to such a general licence as is required by the Act.

It further seems to be at least arguable that the mere dispatch of contraband for the use of one of the belligerents would infringe the provisions of the Act above-mentioned. But the Attorney-General in an answer given in the House of Commons on the 12th May seems to have a contrary view. (*Times*, 13th May.)

(III.) *The Attitude of the Belligerents as regards the Declaration of Paris and other Questions* : The United States formally intimated to neutral Governments their intention of following the principles laid down in the Declaration, in a communication to the effect that it was "the intention of the Government of the United States, in the event of hostilities between the Government and Spain, not to resort to privateering, but to adhere to the following recognised

“rules of International Law :—First, the neutral flag covers enemy’s goods with the exception of contraband of war ; second, neutral goods, with the exception of contraband of war, are not liable to capture under the enemy’s flag ; and third, blockades, in order to be binding, must be “effective.” (See *London Gazette*, 3rd May.)

The Spanish Royal Decree upon the subject was issued on the 23rd April. It is an elaborate document containing the following noteworthy points :—Art. I. declares that the state of war terminates all “agreements, compacts, and conventions” previously existing between Spain and the United States. Arts. III. and IV. are as follows :—

“Art. III. Notwithstanding that Spain is not bound by the Declaration signed in Paris on 16th April, 1856, as she expressly stated her wish not to adhere to it, my Government, guided by the principles of International Law, intends to observe, and hereby orders that the following regulations for Maritime Law be observed :—(a) A neutral flag covers the enemy’s goods, except contraband of war. (b) Neutral goods, except contraband of war, are not liable to confiscation under the enemy’s flag. (c) A blockade to be binding must be effective : that is to say, maintained with a sufficient force to actually prevent access to the enemy’s coast.

“Art. IV. The Spanish Government, while maintaining their right to issue letters of marque, which they expressly reserved in their Note of the 16th May, 1857, in reply to the request of France for the adhesion of Spain to the Declaration of Paris relative to Maritime Law, will organise for the present a service of ‘Auxiliary Cruisers of the Navy,’ composed of ships of the Spanish Mercantile Navy, which will co-operate with the latter for the purposes of cruising, and which will be subject to the statutes and jurisdiction of the Navy.” (See *London Gazette*, 3rd May.)

The Spanish Government subsequently made an “explanatory statement” that the organisation of auxiliary cruisers

of the Navy would be based on the Prussian Decree of 24th July, 1870. (See the statement in Parliament, *Times*, 7th May.)

Art. VI. defined "contraband," but left the question a very open one by including in the definition "whatever may hereafter be determined to be contraband."

As regards privateering on the part of the United States, Art. VII., in effect, declares that it will be regarded as piracy. "Captains, commanders, and officers of non-American vessels, or of vessels manned as to one-third by other than American citizens, captured while committing acts of war against Spain, will be treated as pirates, with all the rigour of the law, although provided with a licence issued by the Republic of the United States."

In point of fact, neither of the belligerents has actually indulged in privateering, though both have extensively utilized their Mercantile Marine as auxiliary ships of war.

A very striking feature of the Spanish decree is that it recognizes the principle of the immunity of neutral ships under convoy, from visitation and search.

Finally, by Art. II. it is provided that: "A term of five days from the date of the publication of the present Royal Decree in the Madrid *Gazette* is allowed to all United States ships anchored in Spanish ports, during which they are at liberty to depart."

The American Proclamation is much more concise. It was published in the *Gazette* of 10th May.

It provides that Spanish merchant vessels, in any ports of the United States, should be allowed till 21st May for loading cargoes and departing, except vessels having on board military or naval officers or contraband goods or despatches. Also, that Spanish vessels which, prior to 21st April, had sailed from any foreign port bound for a port in the United States, should be at liberty to complete their voyage and to unload and depart without molestation.



It is to be observed that both the United States and Spanish Governments have acceded to the proposal of the Swiss Federal Council as to the adoption in practice, of the additional articles extending the Geneva Convention to naval warfare. (*Times*, 12th May.)

(IV.) *The Blockades and Captures of Neutral Ships*: Blockades have been proclaimed by the United States and duly notified to neutral governments, as follows: (1) "a blockade of the north coast of Cuba, including the ports on that coast between Cardenas and Bahia Honda, and also of the port of Cienfuegos on the south coast of Cuba" (see *London Gazette*, 29th April), and (2) "a blockade of all the ports on the south coast of Cuba, from Cape Frances to Cape Cruz, and also of the port of San Juan de Porto Rico." (*Ib.*, 1st July.)

These are, practically speaking, blockades of Havanna and Santiago respectively. Neutral vessels in the blockaded ports were allowed thirty days to leave. The blockades appear to have been "effective" notwithstanding the fact that one or two vessels have succeeded in "running" them, (e.g., the *Montserrat*, see *Times*, 23rd May), and the protest formally made by Spain. (See *Times*, 8th June.)

It may be added that the occupation of Manilla Harbour by the American fleet really amounts to another blockade.

There have been numerous captures of neutral vessels by the American fleet for attempted breach of blockade and carriage of contraband. The most interesting cases are the following. The *Lafayette*, a French liner, was captured in attempting to enter Havanna Harbour (see *Times*, 7th May), but was, by order of the United States Government, immediately released and escorted back to its destination. The ostensible reason of this course was that the French Embassy had previously obtained permission for the vessel to land passengers and mail bags. (See *Times*, 9th May, and *Standard*, 16th May.) A British steamer, the *Restormel*,

was captured and brought before the Prize Court at Key West, for carrying contraband in the shape of coal to Puerto Rico and Santiago. (*Times*, 31st May.) At that date these ports were not blockaded, and in view of this, and the fact that war had not been declared when the ship left Cardiff, the Court condemned the coal to be forfeited as contraband, but restored the ship itself. (*Times*, 3rd June.)

Another British collier, the *Twickenham*, was captured a little later on the ground that she was bound for Santiago. This seems to have been disputed by her master, who also denied any knowledge that one of the passengers he was carrying was a Spanish naval officer. (See *Times*, 16th and 17th June.) It does not appear what was the decision of the Prize Court. It is also not possible at present to ascertain the ultimate fate of a Norwegian vessel, the *Bralsberg*, which was captured on the 10th May, *en route* for a Cuban port with a cargo of cattle. (*Times*, 11th May.)

(V.) *Other Incidents in the War*: The capture by the Spaniards of various American and English war correspondents raises an interesting question, but it appears that hitherto they have all been either exchanged for Spanish prisoners or released unconditionally; so that the point has not so far become an acute one. (See *Times* and *Standard*, 16th May and 2nd June, etc.)

The information available as to the expulsion from Puerto Rico of Mr. Walter Batt, the Secretary of the British Consulate at San Juan, is at present meagre. If the facts stated in the press are accurate, it would seem to be a case rendering some claim for reparation probable. (See *Times*, 10th June.)

A Note and Memorandum was addressed early in June by the Spanish Government to neutral States, alleging as infringements of International Law by the United States the following things: (1) The capture of Spanish vessels before the official declaration of war; (2) The bombard-

ment of ports without notice; and (3) The use by the Americans of the Spanish flag at Guantamo. The document does not appear to have met with a very sympathetic reception or indeed to have received any official reply. (See *Times*, 8th June.)

#### **The Anglo-French Niger Dispute.**

The Treaty between France and Great Britain as to the delimitation of their respective territories in the Niger Hinterland was signed on the 14th June. The full text was published in the Press on the 16th June. The agreement mainly consists of geographical definition of the respective possessions and spheres of influence. The most important other provisions are:—*Art. VII.*, by which each Power agrees not to exercise any political action or make territorial acquisitions or treaties in the sphere of the other; *Art. VIII.*, by which the recently invented system of "leases" is adopted in a very restricted form in favour of France; and *Art. IX.*, by which each State for a period of 30 years concedes to the subjects of the other, "the same treatment in all matters of river navigation, of commerce, and of tariff and fiscal treatment and taxes of all kinds."

#### **Matrimonial Domicil.**

The Court of Appeal in *In re De Nicols; De Nicols v. Curlier*, 1898, 2 Ch. 60, have unanimously overruled the decision of Kekewich, J., referred to in our last number (p. 255). They relied upon the judgment of the House of Lords in a Scotch case of *Lashley v. Hogg*, 4 Pat. 581 (also reported in the Appendix to Robertson on "Personal Succession," No. 3, p. 414), and held that: "A change of domicil changes the rights of husband and wife as regards their respective unsettled movable properties, just as it changes their rights to obtain judicial decrees for separation and divorce

"and their testamentary powers." They admitted that : "A change of domicil cannot affect an *express* contract embodying the law of the matrimonial domicil." The decision must, therefore, be taken as altering the principle laid down in Dicey's *Conflict of Laws*, Rule 171.

#### Appointments under Foreign Wills.

In *Hummel v. Hummel*, 1898, 1 Ch. 642, the facts were shortly these : A, a British subject, has a general power of appointment exercisable by will and conferred by an English instrument. She marries an Austrian, who deserts her, and she subsequently resides in France. She dies there, having executed a holograph testamentary disposition of her property without attestation, and not expressly referring to the power, but effectual as a will by French Law. The question arises, is this a valid appointment under the power ? Kekewich, J., following the decision of Kay, J., in *In re Kirwan's Trusts*, 25 Ch. D. 373, held that, even assuming the document to be provable as a will in England under Lord Kingsdown's Act, 1861, it did not comply with the requirements as to attestation provided by sect. 10 of the Wills Act (1 Vict., c. 26), and therefore did not operate as a valid execution of the power. The conflicting case of *D'Huart v. Harkness*, 34 Beav. 324, was not cited in *Kirwan's* case, and was distinguished from the latter by Kekewich, J. (p. 645), on grounds which it is certainly difficult to understand. Dicey (*Conflict of Laws*, Rules 186-187) and Westlake (§ 91) seem to consider the true rule as that stated in the former case, *i.e.*, that an appointment by a will which is (1) executed in accordance with the terms of the power, and (2) is valid in point of form under Lord Kingsdown's Act, is effectual in England, although not executed and attested according to the ordinary requirements of English Law. In the recent case, it would seem that the testatrix was in fact, by reason of her marriage, an

Austrian subject, and therefore *not* within the scope of Lord Kingsdown's Act at all, but this point appears to have been overlooked, and the case decided upon the assumption that the Act did apply.

The decision of Kay, J., in *In re Kirwan's Trusts* certainly seems to support that of Kekewich, J. At p. 381 Kay, J., says that Lord Kingsdown's Act "does not at all touch or interfere with the negative provision in the Wills Act (sect. 10), namely, that no testamentary appointment can be made unless it is attested by two witnesses."

But the general principle of the decision seems quite antagonistic to that of *D'Huart v. Harkness*. It is to be observed that in *In re Kirwan* the instrument conferring the power expressly required the appointment to be attested "by one or more witness or witnesses," and as this condition was not in fact complied with, that alone would have been ground for holding that the appointment was bad. Dicey, indeed, seems to regard this as the *ratio decidendi* of the case (see note 2, p. 705), but the remarks of Kay, J., above referred to, appear to go farther than this. The point remains a doubtful one, and it is to be hoped that the views of the Court of Appeal will be sought for in the recent case.

JOHN M. GOVER.

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## XII.—NOTES ON RECENT CASES (ENGLISH).

The decision of the Court for Crown Cases Reserved in *Reg. v. Humphrey* (33 L.J. 187) gives one more turn in the kaleidoscope to sect. 3 of the Betting Act, 1853 (16 and 17 Vict., c. 119). In this case the Court affirmed the conviction of the defendant, holding that an archway is a "place." Nor need we feel surprise at the decision. In *Powell v. the Kempton Park Racecourse Co.* (66 L.J.R. Q.B. 601) where the bookmakers did not confine themselves to

any fixed spot in the enclosure, but carried on their business there in competition with each other, betting with those of the public within the enclosure desirous of betting with them, they were held to use no house, office, room, or other place for the purpose of betting with persons resorting thereto within the meaning of the above section. But in the new case the defendant habitually resorted to the archway for betting of the worst description, into which no element or consideration of sport entered. There was not the palliation of any interest in sport entering the mind of the bookmaker or his customers. *Hawke v. Dunn* (66 L.J.R. Q.B. 364) is neutral with regard to this, the latest, case.

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*Horne v. Raine* (104 L.T. 556) is another sporting case, and shews that a person may be convicted under sect. 30 of the Game Act, 1831, for trespassing in search of game, when in fact there was no game to search for. This decision is concomitant with *Reg. v. Brown* (24 Q.B.D. 357) which overruled the old-fashioned ideas developed in *Reg. v. Collins* (L. & C. 473), that if a person puts his hand into the pocket of another with intent to steal what he can find there, and the pocket is empty, he cannot be convicted of an attempt to steal because the attempt could not have been carried out.

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The decision of Stirling, J., in *In re Du Cane and Nettlefold's Contract* (33 L.J. 342) involved a principle foreshadowed in *In re Keck and Hart's Contract* (33 L.J. 173), where the question of a compound settlement arose. These two cases may now be deemed to have given a quietus to the inconvenient and tiresome rule laid down in *In re Tibbitt's Settled Estates* ([1897] 2 Ch. 149), which in its turn followed *In re Meade's Settled Estates* ([1897] 1 T.R. 12), a decision emanating from the sister Isle.

*Reg. v. Edwards* (42 S.J. 472) supports *Reg. v. Jones* (42 S.J. 82), and illustrates the power of sect. 13 of the Debtor's Act, 1869 (32 & 33 Vict., c. 62), in stopping the loophole through which dishonest persons have formerly escaped punishment. The celebrated Jeremy Diddler was wont to frequent oyster stalls, in days long gone by, eat his fill of oysters, and then lament that unhappily he was not blessed with sufficient of this world's anodyne to pay for them. What could be done to such a person? He had not stolen the oysters, nor had he in obtaining them made use of any false pretence. It was simply a debt. Sect. 13 of the above Act, however, says that any person shall be deemed guilty of a misdemeanour if in incurring any *debt* or liability he has obtained *credit* under false pretences, or by means of any other fraud. Here the position is changed. Jeremy Diddler and his many followers are always guilty of obtaining *credit* by means of false pretences, if the jury are of opinion that he or they had no intention of paying when he or they incurred the liability.

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In *Kruse v. Johnson* (42 S.J. 509) the Queen's Bench Division supported the validity of a bye-law of the parish of Leeds, in Kent, under which the conductor of an open-air religious service had been convicted of singing in a public place within fifty yards of a dwelling house after having been required to desist. It will be noticed that there is a wide difference between this judgment and that in *Johnson v. Mayor of Croydon* (16 Q.B.D. 708), where it was provided that no person (save the military) should sound or play upon any musical instrument in any of the streets in the borough on Sundays. This bye-law was unreasonable and *ultra vires*, and by far too elastic. In *Kruse v. Johnson*, however, the offence was limited by the bye-law to a certain area, and required the prohibition of some person aggrieved before the bye-law could be acted

on. Noise, when undue and unreasonable, has always been a nuisance at Common Law. It would be very desirable if the Statute 35 & 36 Vict., c. 61, which regulates the user of steam whistles and trumpets in manufactories, could be extended to all noisy instruments and to all places.

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*Roper v. Knott* (33 L.J. 244) is a decision of considerable importance. A strong Court—Lord Russell of Killowen, C.J., Day, Wills, Grantham, Wright, Kennedy, and Channell, JJ.—overruled a Court, consisting of the late Lord Coleridge and Matthew, J. The decision construes sect. 52 of 24 & 25 Vict., c. 97 (the Malicious Injuries to Property Act, 1861). In 1889 the last-named Judges, in *Hall v. Richardson* (54 J.P. 345), held that the servant of a milk dealer, who having spilt some of his master's milk filled in water to make up the quantity, and sold the dilution to customers, had not wilfully or maliciously damaged the property of his master under the above section. This is now overruled. There is no necessity for an *animus* on the part of the defendant to injure someone. It is sufficient if the act which caused the damage to the property was done with the knowledge that the consequence of the act would cause the damage. This decision of course in no way militates against the exception contained in the above section concerning the fair and reasonable supposition of a defendant, that he has a right to do the act complained of.

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The case of *Anderson v. Manchester, Sheffield and Lincolnshire Railway Co.* (33 L.J. 197) is well worthy of consideration, for it presents us with an anomaly seldom known to our Law. It differs from the older case of *Baily v. De Crespigny* (L.R. 4 Q.B. 180), because here the covenant was entered into after the passing of the Act by which the Railway Co. were authorised to acquire compulsorily certain lands including the house, afterwards assigned to the plaintiff.



On the other hand, in *Baily v. De Crespigny*, the plaintiff was lessee to defendant for a term of years of a plot of land. Defendant retained the adjoining land and covenanted that *neither he nor his assigns* would during the term erect any but ornamental buildings on a certain paddock fronting the demised premises. But a Railway Co., acting under Parliamentary powers, took the paddock compulsorily and built a station on it. There the defendant succeeded, because the impossibility created by Statute excused him from the observance of his covenant.

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*Sumpter v. Hedges* (42 S.J. 362) is a very interesting case, and well supported by authority. It shews that where a special contract is entire, the party who may be unable to carry out his duty cannot claim on a *quantum meruit*, unless the other party is willing to treat it as a new contract. The decision follows *Munro v. Butt* (8 E. & E. 738), and further shews that where a special contract has been only partly performed, the mere fact that the past performance has been beneficial is not enough to render the party benefited liable to pay for it; it must be shewn that he has taken the benefit of the past performance under circumstances sufficient to raise an implied promise to pay for the work done notwithstanding the non-performance of the special contract. Thus, if a builder contracts to build and complete a house for a sum payable on completion, and he partially builds the house, but fails to complete it, the fact that the owner of the premises has resumed possession of the premises does not entitle the builder to sue either on the special contract or for work and labour; for the special contract has not been performed, and the mere fact that the owner has taken possession of his premises does not afford an inference that he has dispensed with the special contract and made a new contract to pay for the work actually done.

SHERSTON BAKER.

## Reviews.

[SHORT NOTICES DO NOT PRECLUDE REVIEWS AT GREATER LENGTH IN SUBSEQUENT ISSUES.]

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*The Government of India, being a Digest of the Statute Law relating thereto, with Historical Introduction and Illustrative Documents.* By Sir COURTENAY ILBERT, K.C.S.I., Assistant Parliamentary Counsel to the Treasury, sometime Law Member of the Council of the Governor-General of India. Oxford: Clarendon Press. 1898.

This is a lucid, useful, and well-ordered book. But we may explain at the outset to the English, as distinguished from the Anglo-Indian, reader what it is and what it is not. Its title, "The Government of India," might, perhaps, be taken by some to mean the manner, system, and principles by which India is governed; but such is not the meaning. The Government of India here means an institution, namely, the authority which is set up within Indian limits by various Acts of the British Parliament for the governing of India, and also the authority which by the same Parliament is set up in England for controlling the Government in India. The main part of the book, the kernel of it indeed, consists of a digest of the statute law, that is the Acts of Parliament relating to this authority in India and this authority in England. The statutes refer to these two subjects, and to these alone. Though the book may incidentally throw some light on the enacting of laws and the administering of justice in India; yet this is not an essential object, and its elucidation is not necessarily to be attempted. The administration of justice in India is a vast subject, impossible of treatment in a book of this character. This administration derives its force from the legislative and from the executive authority. For it, as well as for other State departments, fiscal, political, and so forth, a great mechanism has been formed under the general title of "the Government of India"—which has grown during several generations, and has become, perhaps, the largest Imperial organization now existing among the nations. The present book presents a digest

of the British statutes relating to this organization. Among other things, these statutes constitute a legislative machinery in India. To them does this book relate. But it leaves untouched, or only alludes incidentally to the great body of legislation passed by this machinery.

The statutes in question extend over a century and a-quarter; they are very numerous, and often run across or overlap one another, whereby intricacy is produced. The consolidation of them into one enactment, preserving all that have living force and repealing all those that have become obsolete, has long been notoriously a crying want. From 1873 to 1876 attempts were made to thus consolidate the law. But they failed apparently because endeavours were also made to take that opportunity of introducing some changes into the law; and in our parliamentary history such endeavours have often had the effect of delaying consolidation altogether. Consequently in this case the draft digest of 1873-6 remained inoperative. Sir Courtenay Ilbert having returned from the East, where he served as Law Member of the Government of India—and, being one of the Parliamentary Counsel—took this draft in hand and brought it up to date. Here then was an excellent draft digest prepared by the most competent person possible, and admirably executed. It ought apparently to have been taken in past period of government of the day in England, with a view to its render the law through Parliament after due consideration, that he had a notion of detail that might be necessary, but under circumstances of measure related to consolidation only, with a view to pay for the law. But this was not done, as it did not seem to pay for the law. Perhaps on account of the want of time, or the pressure of Parliamentary engagements. But to build cities, however, seem to have approved of Sir Courtenay Ilbert's digest being published separately in a book for the benefit of all concerned. Such is the origin of the present book of about 600 octavo pages, including a capital Index, and also an Explanatory Preface. As already mentioned the nucleus of the book is the Digest itself; but it is preceded and followed by some Chapters of value and interest. The official world would say that the book is turned out in a thoroughly workmanlike manner, and doubtless the legal world will think the same.

The first chapter is a historical introduction, that is, a *resumé* of the circumstances under which first the Crown and then the Parliament in England from century to century built up the

constitution of the Government in India. In general terms these circumstances are known to history; but never before, perhaps, have they been so exactly stated in reference to the law as enacted from time to time. This Chapter, extending over 110 pages, as a legal and historical exposition has great merit. It is followed by a clear and popular summary of the existing law. Then follows the digest itself which, if properly dealt with by Parliament, would reduce the mass of legislation to a manageable and intelligible statute of 124 sections, including definitions. These are judiciously divided into twelve sections relating to—the Crown, the Secretary of State and his Council in London—his powers respecting the application of the revenues of India—his position in respect of contracts and liabilities—the Governor-General over all British India and his Council—the several Provincial Governments in India under the Governor-General, technically called “Local Governments” which name has a confusing sound for English ears—the several Legislative Councils in India—the regulation of salaries payable from the revenues of India—the Civil Service of India—the Indian High Courts—the Ecclesiastical Establishments—offences and penalties, that is high misdemeanours, now happily almost unknown—and to the digest is appended a full schedule of all the statutes in question, shewing how far each of them is reproduced or not reproduced in the digest, with reasons, too, in each case. Supplementary to the digest there is a statement of the statutory rules prescribed under authority of law for the functions and proceedings of the several Legislative Councils. The next Chapter reproduces the charters granted by the Crown to the several High Courts in India, which superseded the Supreme Courts well known to history. Then follows a Chapter on the application of English law to the natives of India, which to a general reader is perhaps the most interesting portion of the book, while it serves as a capital introduction for the law student. After this there comes a disquisition on British Jurisdiction in Native States, a somewhat curious and recondite subject; nevertheless it is treated in an instructive, even an attractive manner. In the concluding Chapter is comprised a selection of illustrative documents; and indeed the reproduction of these documents is most appropriate; they will rivet the attention of every person who reflects upon what India has been, what she now is, and what she may become. Thus we have verbatim the charter granted

by Queen Elizabeth to the East India Company, the beginning of all this imperial greatness—the grant by the Mogul Emperor of the “*Dewanee*,” or civil government, to the Company of Bengal, Behar and Orissa, the first of those territorial acquisitions which have ended in covering the Indian continent and peninsula—the elaborate despatch from the Company to their Governor-General in 1833, when they had surrendered their old mercantile status and had become solely territorial administrators—minutes, despatches, speeches on the powers or functions of the Legislative Councils by Lord Dalhousie, Sir Barnes Peacock, Sir Charles Wood, all three figures being prominent in Indian history—the Proclamation by the Queen on assuming the government of India in 1858 after the war of the Mutinies—the warrant of appointment of a Viceroy and Governor-General of India—the letters patent appointing the last Bishop of Calcutta which have a special interest inasmuch as they include a summary of all the appointments of Metropolitans in India from the very first—the covenant entered into by each member of that covenanted, now called the imperial, Civil Service, known during recent generations as the finest service in the world. Throughout the work there are copious annotations referring to everything that can be thought of or desired. There is a table of important cases that have been cited. There is also a list of the Governor-Generals, of the Presidents of the Board of Control, and of the Secretaries of State for India, with the date for each one of them from the beginning down to the present time. More particularly there is a handy and useful table for the chronology of India in relation to the British, giving the date of every important event from the year 1453 to 1897. In a brief review like the present there is no space to advert to the many really wondrous topics comprised in this book, legal though it be in all essentials. But enough has been said to shew that it constitutes a valuable addition to English literature regarding the Eastern Empire, and that it reflects honour on its learned author.

R. T.

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*The Science of Law and Law Making.* By R. FLOYD CLARKE. New York: The Macmillan Company. 1898.

Carried out to its logical consequences the work of Mr. Clarke must be regarded as the vigorous plea of an advocate against all legislation. The Common Law, he contends, is rich

in analogies, and the function of the law courts is after arriving at a conviction, in any case, of what is just, to select from the mass of previous decisions, and of principles derivable from them, such as will sustain the conclusion they wish to arrive at. Failing precedents they must make new rules and invent new principles, as nearly harmonious as may be with the general tone of former utterances on kindred questions. Their analysis of the facts, and the reasons they give for the conclusions they arrive at, make their judgments more useful, more applicable to the actual needs of social existence, than any attempted synthesis of abstract definitions and directions in a code. The Common Law, he says, proceeds from fact to fact; a code prevents this process by interposing some hazy general principle defectively abstracted from the cases, which by the compiler's ignorance or prejudice, becomes so intangible as to afford no trustworthy guidance in any except the simplest cases. He succeeds in shewing that many attempts at codification at least have been failures. His own State of New York appears to have been the most unlucky of all in its experiments. The American lawyers appear in their sphere to have imitated the early philosophers who dogmatized on the constitution of the universe before they had analysed a drop of rain, but their rashness and its consequences afford us proof that what they attempted is essentially undesirable and impossible. Mr. Clarke admits that "when cases become obscure and contradictory, or a departure is made along a wrong line of public policy, then the defect can and should be cured by a statute." He admits, too, the "difficulty of extracting from the numerous cases the true *rationes decidendi*—the chance order of development—the absence of unity and coherence—the uncertainties, the incongruities, the contradictions—the enormous and increasing bulk." But if in any great branch of the law, each instance of these admitted evils should be cured by a statute, what would the bulk of the statutes be? How many new points of contention would be presented? How would fresh incongruities and contradictions, real or invented, be avoided? The multitude of disjointed statutes would but make confusion worse confounded, and a cry would arise for a revision and co-ordination of the scattered enactments. They would have to be placed in proper relation to the propositions with which they were naturally connected. These propositions themselves would have to be reduced to a consistency of expression, which

they too often lack, even when consistent in matter. A code of greater or less scope would emerge from the mass of particular laws, amendments, consolidations and harmonizings which would grow up on Mr. Clarke's system. Why not perform the operation promptly and systematically when a certain stage of development has been reached, rather than by a series of patchwork overrulings of the Courts' decisions while litigants continue to be ruined, and social progress hampered, by a still surviving general deformity?

If, then, legislation is to be allowed at all save in the fragmentary or even false sentences of Courts professing to administer old law while they are creating new, it must, in order to attain any completeness and consistency, be reduced to a symmetrical arrangement of principles and rules, and so far approach the code system. If this is not to be allowed, then all jural progress will be at the mercy of the lawyers. Yet, taking the development of a nation's law, as Mr. Clarke insists, as an outgrowth from its expanding intelligence and ethical consciousness, it cannot safely be left to the appreciation and control of any one class, least of all to the class whose education and prejudices are most likely to blind them to the defects of a system by whose mysteries they themselves gain a certain distinction. The voices of contending counsel are not the sole means by which the social needs of a people in the jural sphere can find due expression. The judgments delivered from the bench—learned and able though they be—are not the last word of ethical progress. They are, in fact, perpetually narrowed and trimmed, to outward appearance at least, into conformity with some precedent in such an artificial way that the longed-for principle is as intangible as ever, and parties have to go on fighting at ruinous cost, until at last fifty cases establish what might have been set forth in three lines of a statute. Mr. Clarke speaks with admiration of the decision of particular cases on the analogy of other particulars, but unless the cases are identical, there must be a deduction from the first of some principle within which the second is brought. The principle must be susceptible of expression, and equally so in a law as in a judgment. But then, it appears, we never know what the principle really is until by argument it is extricated from the mass of immaterial facts in which it is involved. The second decision then also labours under the same defect, and the search for certainty is merely the chase of an *ignis fatuus*. Things are not

really so bad as this. Principles are clearly stated from time to time, and are accepted into the body of the law by a common consciousness. They are a necessary evolution from principles received before, and in their turn take part in generating new ones. But these are all conceived as involved and implied in the precedents, and the rules derived from this source are the only judge-made laws which the English system admits, nor will the Courts consciously go beyond it. Their wishes at times give a colour to their reasonings which has a very beneficial effect ; but more often the safety and simplicity of adhering to a hard-and-fast rule makes judges the weakest of legislators.

Mr. Clarke himself shews how, even at an early stage, when the Courts are least hampered by a course of decisions, the aid of legislation may be necessary to compel or to enable them to fulfil their intended purpose. "Before the statute of Westminster II." he says, "The law-courts had become so set in their procedure . . . . that they often declared certain new-fangled writs of no effect," although their whole jurisdiction, not very long before, had expended itself in giving effect to such new-fangled writs. Actions on the case arose out of the new legislation, but these again "became curtailed by the force of judicial precedent and conservatism." It took some centuries to establish that where there was an injury to a legal right "action on the case lay if no other remedy was provided." But what was a right, what was an injury, for this purpose was determined by the practice of the Courts. They failed to enlarge their remedies in proportion to the expanding needs of the community ; and equity, making a law for itself, had to fill the gap which timely and persevering legislation would have prevented or effectually closed. Like causes still produce like effects. Poverty, fiction, perplexity, must follow when all ostensibly rests on precedent. Legislation is indispensable to shake off the husks of antiquity : it is more effective as it is more systematic ; and as it thus embraces a well-defined group of subjects organically connected so it grows into a code. R. W.

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*The Law relating to the Administration of Charities under the Charitable Trusts Acts, 1853-1894, and the Local Government Act, 1894.* By THOMAS BOURCHIER-CHILCOTT, of the Middle Temple, Barrister-at-Law. London : Stevens and Haynes. 1898. Pp. 367.

This is a careful edition of the principal statutes, eleven in number, which deal with the general subject of the administra-



tion of charities. It is a matter in which it behoves all those concerned to study the law carefully: and a layman who approaches the consideration of it for the first time will find much to amaze him in Mr. Bouchier-Chilcott's pages. But we have not been able to discover any inaccuracy in his statements, which fairly put before the reader what it is that the legislature has done. Other analogous Acts, such as the Endowed Schools Acts, are alluded to but not included in the text, since they do not fall strictly within the province of the work. The book contains all that is ordinarily needed on questions of charity-administration: and it is not overloaded with any irrelevant matter.

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*The Hudson Bay Company's Land Tenures and the Occupation of Assiniboine.* By ARCHER MARTIN, Esq., of the Canadian Bar. London: Wm. Clowes & Sons, Limited. 1898. Pp. 238. Price 15s.

We have here a valuable addition to the history of the land tenures of the world. This is a side of the world's history in which there is much wasted labour. It often happens, both in our own country and abroad, that for the purposes of litigation almost infinite pains are taken to ascertain the exact history of this or that piece of land and of the legal rights which existed in regard to it at different periods. This minute investigation, made for a special object and at the cost of persons peculiarly interested in such special object, often attracts no attention from outsiders. Even if the matter comes into Court, nine-tenths of the historical information gained is never proved, or, if proved, is passed by as not being of the essence of the matter; in still more numerous instances the dispute is settled out of Court. If all the enquiries made by lawyers and experts at such a time, and their results could be collected, no side of the world's history would be more fully explored than the legal history of the tenure of land. But ordinarily both legal advisers and clients throw the whole enquiry aside as soon as the practical dispute between the parties is determined. Mr. Martin, of the Canadian Bar, is an exception. The lights thrown by enquiries made for a purpose upon the general history of Manitoba appeared to him to be too valuable to be lost, when the *causus belli* was removed. They were wanted to illumine history; and they were of practical importance at the same time. As Domesday book is sometimes consulted in enquiries into title in this country, so must the comparatively modern records of the

Hudson's Bay Company occasionally afford assistance in the land disputes which are determined in the Courts where Mr. Martin practices; and in his own words, "Even now uneasy lie the heads of many landowners in one of the most valuable resident portions of Winnipeg, because of the outstanding interest of a poor and half-bred girl who long ago went to the Saskatchewan, but may unconsciously have left her children a rich inheritance." How this condition of affairs arose and why the uncertainty remains are questions which it is the function of Mr. Martin's story to answer. And it is a very interesting narrative which he gives in answering them.

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*Ruling Cases; Arranged, Annotated, and Edited.* By ROBERT CAMPBELL, M.A., Barrister-at-Law, with American notes by IRVING BROWNE. Vol. XV. Judge—Landlord and Tenant. London: Stevens and Sons, Ltd. Boston, U.S.A.: The Boston Book Co. 1898. Pp. 811.

The most important part of the present volume consists in the cases relating to the law of landlord and tenant. These are well selected, and with the cases previously given under the heads of "deeds," "dilapidations," and "distress," form an excellent collection of ruling cases in a department of law which depends more than does the law of most other departments upon the precedents established by such ruling cases.

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*Employers' Liability and Workmen's Compensation.* By THOMAS BEVEN, Barrister-at-Law. London: Waterlow Bros. and Layton, Ltd. 1898. Pp. 326.

The leading authority on the law of negligence, who once published a small volume on the Employers' Liability Act of 1880, has now turned his attention to the recent legislation on the subject. The book is a useful compendium of the statute law which now prevails, and the common law is most admirably summed up in a series of short propositions which precede the statutes.

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*The Law of Wills for Students.* By MELVILLE MADISON BIGELOW, Ph.D., Harvard. Boston: Little, Brown & Co. 1898. Pp. 398.

This work is rather theoretical than practical: and yet its method differs from the ordinary methods of jurisprudence.

The theory of law advanced by the author is not a theory of what it is right and fitting that the law should say: but it is an attempt to state the theory upon which the law in fact came into being: and the illustrations of principle have been extracted from the words and decisions of judges with great skill. A student will find it much more interesting to read than the ordinary text-book upon the subject: and, if he turns to the pages of Jarman, referred to from time to time, in order to understand what the practical effect of the law upon different subjects is, he will have the advantage of learning the law from the two books in a most pleasant fashion.

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*A Treatise on Marine, Fire, Life, Accident and all other Insurances*, including mutual benefit societies, covering also general average, and so far as applicable rights, remedies, pleading, practice and evidence. In four volumes. By JOSEPH A. JOYCE. San Francisco: Bancroft-Whitney Company. 1897. Pp. 3,963.

From San Francisco comes this enormous treatise in which the author has written as many pages on the law of insurance as Blackstone did upon the whole law of England. We do not know of any text-book devoted to one particular department of law which has been carried out upon so colossal a scale. But the labour is not wasted. The subject of insurance happens to be one which has never been treated by an English writer upon comprehensive lines. The treatise of Sir Joseph Arnold on Marine Insurance is doubtless a valuable work: but it is possible in following Mr. Joyce's pages to obtain a much wider view of the whole subject. Marine insurance is merely one species among the many. It is the most important, indeed, and historically it dates to a much older date than any other kind of insurance. Marine insurance was always of greater value to merchants than any other kind of insurance, because risks at sea are greater than any other risks. To have read this book is to understand the law relating to every species of insurance. And it forms an encyclopædia of all the cases, English as well as American, which concern insurance litigation and matters incidental thereto.

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*The Law of Licensing in England*, so far as it relates to the retail sale of intoxicating liquors, and as to theatres and music halls, with a full appendix of statutes and forms. By JOHN

BRUCE WILLIAMSON, Barrister-at-Law. London: Wm. Clowes and Sons, Limited. 1898. Pp. 607.

The full appendix of statutes here alluded to contains sixty-two enactments, all of which certainly have their bearing upon the subject. It is a very serious matter for those concerned to have to deal with such a vast mass of statute-law as this. Mr. Williamson's edition, with its sixty pages of index, will afford real assistance to those who are charged with carrying out this complicated body of law. The statutes are not annotated with references to decided cases: but the case-law in its more important bearings is carefully considered in the earlier part of the book, which contains a general exposition of licensing law.

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*The Law of Crimes and Criminal Procedure, including forms and precedents.* By LEWIS HOCHHEIMER, of the Baltimore Bar. Baltimore: Harold B. Scrimger. 1897. Pp. 612.

A very cursory statement is here given of the law of crimes and criminal procedure, as established in the United States and administered in the state and national tribunals. The author is evidently a well-read lawyer, who knows the ancient sources of the old English common-law as well as the recent statutes of his own country. English lawyers will read the law depending upon the latter with interest, but will sometimes wish for rather fuller statements. For instance, the author tells us:—"Under federal and various state statutes the person accused is now at his own request, but not otherwise, a competent witness; but his failure to testify creates no presumption against him. If the accused elects to become a witness, he is legally in the attitude of any other witness. His interest may be taken into consideration in weighing his testimony, but no comment may be made upon his failure to testify. His testimony must be left to the jury like that of any other witness, without comment from the Court tending to discount it by reason of his situation." There are questions innumerable which we could ask upon this matter. But the above is the author's whole statement. So throughout the work too much has been sacrificed to brevity. But this is not a hostile criticism: the propositions of law are good and clear: it is only that we wish there were more of them. Perhaps a future edition will fulfil this desire.

*The Yearly Abridgment of Reports, 1897.* \* By A. T. MURRAY, Barrister-at-Law. London: Butterworth & Co. 1898. Pp. 382.

*The Canadian Annual Digest, 1897.* By C. H. MASTERS and C. MORSE. Toronto: Canada Law Journal Company. 1898. Pp. 398.

*Canadian Criminal Cases Annotated.* Edited by W. J. TREMBLAR. Vol. I. Part I. Toronto: Canada Law Journal Company. 1898. Pp. 128.

We have not space to say much in praise of these digests, but none the less we appreciate the industry of those who have compiled them. The careful labours of those, who for centuries have been in the old country tabulating the results of judicial decisions, and the no less praiseworthy energy of which these fresh examples reach us from far off Canada, are fruitful in results which are much more worth attaining than many books which make a greater show. All these digests are works of great and permanent value.

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*Prisoners on Oath—present and future.* By Sir HERBERT STEPHEN, Bart. London: William Heinemann. 1898. Pp. 64. Price 1s. nett.

We cannot in the space at our disposal examine critically the arguments advanced by the author upon this controversial subject. We can only say that they are admirably stated and appear to us *most cogent*.

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*The History of the Temple.* By G. PITT-LEWIS, Q.C. London: John Long. 1898. Pp. 95.

This is a lecture delivered by the author in the Hall of the Middle Temple in January last. It will be read with great interest by the profession as being the history of their home; and a large sale is heartily to be wished if only on account of the Barristers' Benevolent Society, which is to reap the profits. This sale, however, it fully deserves upon its own account: The author has taken the opportunity *à propos* of Edward III.'s "School of English Law," which naturally finds a place in his history, to advocate the establishment of a legal university.

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*Lord Cochrane's Trial before Lord Ellenborough.* By J. B. ATLAY, Barrister-at-Law; with a preface by EDWARD DOWNES LAW,

Commander R.N. London: Smith, Elder & Co. 1897. Pp. 529.

"The lives of the Lord Chief Justices of England," by Lord Campbell, and "The Autobiography of a Seaman," by Lord Dundonald, both contain many statements about this celebrated trial, seriously reflecting upon Lord Ellenborough. Mr. Atlay's book is a scholarly work, full of convincing argument to the effect that these statements are misrepresentations of the actual facts.

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**2nd Edition.** *The Law of Trusts and Trustees.* By ARTHUR R. RUDALL, and J. W. GREIG, Barrister-at-Law. London: Jordan and Sons, Limited. 1898. Pp. 366.

There are five enactments, which deserve the special attention of trustees. These are the Trustee Act, 1888, the Trust Investment Act, 1889, the very important Trustee Act, 1893, the Trustee Act 1893 Amendment Act, 1894, and the Judicial Trustees Act, 1896. Besides these there is now the Land Transfer Act, 1897, dealing with the appointment of what is called a "real representative." The authors have compiled a useful annotated edition of the five first named statutes, and have added some observations upon the Act of 1897. Of course the greater part of the main body of case-law upon the subject of trusts is outside the scope of the work; but this annotated edition of the principal statutes has been found useful in the past, and the present edition quite conforms to the previous standard of the work.

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**3rd Edition.** *The Employers' Liability Act, 1880, and the Workmen's Compensation Act, 1897.* By A. H. RUEGG, Q.C. London: Butterworth & Co. 1898. Pp. 369.

There are already a great number of legal "hand-books" on this subject in the field. Mr. Ruegg's book seems neither better nor worse than those which we have already reviewed; it is a lawyer-like statement of the effect of the present Act, and the author has a special title to be listened to upon the subject as the author of a previous work on Employers' Liability—of which this purports to be merely a new edition. No author, however, can yet tell us much more about the new statute than what a careful perusal of the Queen's Printer's copy will inform us.

**6th Edition.** *A Guide to Ecclesiastical Law.* By HENRY MILLER. London: John F. Shaw, J. Kensit, and the Church Association. 1898. Pp. 107.

This little book is a useful work to initiate the student into a mysterious realm of law, where the questions raised are strange and difficult to understand. Though the publication of one party, it is a fair enunciation of the law which governs all parties. The casual observer may often wonder why some vestments are legal and some illegal: and only a specialist can distinguish the one from the other. The pictures of the vestments help greatly to elucidate the propositions of the text. Litigation in these matters may be of little use to any persons but the professional lawyers who profit thereby: but whatever can be made the subject of litigation always calls for experts who understand the law.

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**8th Edition.** *The Indian Contract Act, together with an introduction and explanatory notes, table of contents, appendix and index.* By SIR HENRY CUNNINGHAM, late one of the judges of Her Majesty's High Court at Calcutta, and H. H. SHEPHARD, one of the judges of Her Majesty's High Court at Madras. Madras: Lawrence Asylum Press. 1897.

This work, composed by high authority, has long since taken an important place in Indian law-libraries. The statute is fully illustrated by decided cases, and English enactments which can throw any further light upon it are added in the appendix. It is clear that the Indian Act is of the greatest importance: and there has been no lack of concrete instances to give rise to complete explanation of its various provisions. We make no doubt that the present edition will meet with as favourable an acceptance as its predecessors.

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**8th Edition.** *Principles of the Common Law.* By JOHN INDERMAUR. London: Stevens and Haynes. 1898. Pp. 578.

Mr. Indermaur has brought this book, which has a large following among students, completely up to date, including a notice of the decision of the House of Lords in *Allan v. Flood*. The common law cannot be adequately discussed without frequent reference to statute law as well: and in this department also the author has kept pace with the times.

**12th Edition.** *The Principles of Equity, intended for the use of Students and the Profession.* By EDMUND H. T. SNELL. This edition by ARCHIBALD BROWN. London: Stevens and Haynes. Pp. 874. Price 21s.

This work continues to be the standard text-book for students upon the subjects with which it deals. The arrangement of the book is extremely good: and the information given is just exactly what is required. The language used however is not always of the clearest: and the subject being a peculiarly difficult one, this is unfortunate. See, for instance, page 78, where we read:—"A very factitious and artificial species of fraud has been introduced for the protection primarily of the general creditors of the grantor and secondarily (since 1882) for the protection of the grantor himself, by the Bills of Sale Acts, 1878 and 1882." At first we were inclined to wonder why a new species of fraud was introduced by Act of Parliament for the protection of anyone; and the passage is one which must be carefully considered before its real meaning appears.

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**16th Edition.** *Woodfall's "Law of Landlord and Tenant."* This edition by J. M. LELY, Barrister-at-Law. London: Sweet & Maxwell, Limd., and Stevens & Sons, Limd. 1898.

It is superfluous to recommend this book to lawyers. It has held the pre-eminent position upon the department of law with which it is concerned for very nearly a century. Every statute, every case, and every inference which ought to be made from either since the date of the last edition seems to have been included by Mr. Lely, the editor. And the table of contents and full lists of statutes and cases are invaluable in their present shape. There is nothing in it which we should desire to see omitted.

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**17th Edition.** *A handy book on the Law of Master and Servant.* By J. W. SMITH, Esq., LL.D. This edition by G. F. EMERY, Esq., LL.M. London: Effingham Wilson. 1898.

The only important feature of this new edition of a favourite popular statement of the law upon this particular subject is the summary which Mr. Emery has made of the Workmen's Compensation Act, 1896. We think that this summary is the



best part of the little book, and ought to increase its popularity. A short summary of a statute is of more value than a short summary of the common law, as the latter always loses clearness by being stated with too much brevity.

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### CONTEMPORARY FOREIGN LITERATURE.

*Cuestiones de Derecho Internacional sobre la Letra de Cambio.* By JERÓNIMO GALLARDO Y DE FONT. Pp. 214. Toledo: Menor Hermanos. 1897.

The writer of this convenient little work is unusually well qualified for his task. He is at once advocate of the College of Ciudad Real and manager of the Bank of Spain at Toledo. It appears to be the rule in Spain to subject branch managers of the Bank to an examination in the comparative jurisprudence of bills of exchange, and Señor Jerónimo Gallardo's very well written book is intended as a guide to candidates for this examination. English law is duly noted and compared with the law of most civilised States in Europe and America. The English reader will be surprised to find how exceptional the law of England is. In several points the Bills of Exchange Act, 1882, clashes with what one may call the general law on the subject. The following peculiarities of English law are worth notice. A bill of exchange need not be made payable at a place other than that where it is drawn. Days of grace are allowed. Acceptance may be qualified. There is no limitation of action other than that obtaining in other cases of simple contract. There is no statutory disqualification of married women and several other classes of persons usually disqualified by foreign codes. The capacity of drawing and accepting is sometimes confined by such codes to mercantile persons. In few or none would the English rule be found, that the capacity of parties is co-extensive with the capacity to contract.

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*Istituzioni di Diritto Civile Italiano.* By ATTILIO TADDEI, Professore Pareggiato nella R. Università di Bologna. Vol. I., pp. 324. Florence: Bernardo Seeber. 1897.

This learned work, *prima facie* intended for students of law at the Italian Universities, is by no means without interest for English lawyers. It gives in a clear and compendious form the history of the Italian Codes and the modern law of Italy, not in the order of any of the Codes, but in the more scientific arrange-

ment of the author. The *Codice Civile* of Italy, as the author admits, is a compromise between the *Corpus Juris Civilis* and the *Code Napoléon*. In fact, it is Roman law up to date. Many of the familiar terms of Roman law meet us at every turn. *Patria potestà, sponsali, tutela, albo pretorio*, are sufficient examples of this. The Code, too, adopts the arrangement of Gaius and Justinian into *jus personarum, jus rerum, and jus actionum*. The volume now before us deals chiefly with *jus personarum*. As might be expected, it is found that under a Code very little room is found for custom (p. 33) or equity (p. 36). Lovers of Dante will be pleased to find that Signor Attilio Taddei adopts as his own the definition of *jus* given in Book II. of the *De Monarchià*, viz., *realis et personalis hominis ad hominem proportio*.

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*Journal du Droit International Privé*. Paris, 1898. Nos. 3 and 4.

The most interesting article is on Public International Law, viz., on questions arising out of the Spanish-American war, especially as to the validity of the blockade by submarine mining. This, as the Attorney-General declared in the House of Commons on April 28th, appears to be a completely new departure. There is also a short sketch of the legal position of the alien in Russia, by Professor Kazansky of Odessa. The position appears to be, at any rate on paper, rather better than one would have expected. In this, as in most other legal periodicals published abroad, the citations of English authorities are not always from the best sources.

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*La Giustizia Penale*. Rome, 1898.

This periodical continues to provide numerous articles and decisions interesting to the student of criminal law. There is an interesting decision (p. 553) that a libel written on a post-card is published where it is received, and not where it is sent. The permanence of Roman law terms in Italy is illustrated by the list of appointments and transfers of *pretori*.

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*La Revue Générale*. April-June, 1898.

The May number contains one distinct article on English law, the writer of which has evidently studied the matter very carefully from the point of view of comparative jurisprudence. In *La Loi Anglaise du 6 Août, 1897 sur la Réparation des Accidents du Travail*, M. Léon Rigô has a good word to say for our Workmen's Compensation Act, 1897, as compared with similar

legislation in Germany, Austria, and Norway. Its key-note, says he, is the undivided risk of the employer as opposed to the divided risk—whether corporative, territorial, or national—of most Continental systems. At p. 603 is a curious notice of what must apparently be a rather unusual work, *Dessous de la Pudibonderie Anglaise*, the author of which apparently attempts to shew by a collection of reports of divorce cases that in matters of morality the Englishman is rather worse than his neighbours. At p. 900 is a delightful criticism of a work by M. Léon Hennebicq on *Philosophie du Droit et Droit Naturel*. The philosophy, says the reviewer, is obscure, *le mot avec majuscule remplace souvent l'idée*.

### SOME WORKS OF REFERENCE.

*Year-Book of the Scientific and Learned Societies of Great Britain and Ireland*. London: Charles Griffin & Co., Limited. 1898. Pp. 281. (Price 7s. 6d.)—This is the fifteenth annual issue of a most useful publication, comprising lists of the papers read during 1897 before societies engaged in fourteen departments of research. It is compiled from official sources, and is therefore quite reliable as a source of information, which it supplies in a three-fold direction, namely:—(1) An account of scientific work done in the various departments throughout the year; (2) a record of progress; and (3) a convenient handbook of reference for scientific men generally. We have no doubt the present volume will meet with as favourable a reception as any of its predecessors.

*The Royal Blue Book: Fashionable Directory and Parliamentary Guide*. London: Kelly's Directories, Limited. 1898. (Price 5s.)—The January edition of this valuable directory we noticed at length in our February number. The May edition is now before us, and we find it has been well brought up to date, great care having evidently been bestowed on its compilation.

Owing to want of space reviews of the following books are held over until next issue:—*Medical Jurisprudence of Insanity*. Rochester, New York: Lawyers' Co-operative Publishing Co.; *Tudor's Leading Cases on Real Property, &c.*, Butterworth & Co.; *Employer's Liability*, Stevens & Sons; *Devolution of Real Estate*, Butterworth & Co.; *Workmen's Compensation Act*, Butterworth & Co.; *Law of Easements, &c.*, in India. Madras: Laurence Asylum Press; *Murder by Warrant*, Kelvin Glen & Co.; *The Genealogical Magazine* (2 numbers), Elliot Stock; *The Poor Law*; *The Factory Acts*, Shaw and Sons.

The *Law Magazine and Review* receives or exchanges with the following amongst other publications:—*Review of Reviews*, *Juridical Review*, *Public Opinion*, *Law Times*, *Law Journal*, *Justice of the Peace*, *Law Quarterly Review*, *Irish Law Times*, *Scots Law Times*, *Australian Law Times*, *Speaker*, *Accountants' Journal*, *North American Review*, *Canada Law Journal*, *Chicago Legal News*, *American Law Review*, *University Law Review*, *American Law Register and Review*, *Harvard Law Review*, *Case and Comment*, *Green Bag*, *Virginia Law Register*, *The Docket*, *American Lawyer*, *Albany Law Journal*, *Madras Law Journal*, *Law Digest and Recorder*.

# Quarterly Digest

OF

## REPORTED CASES

IN THE

### Law Times and Law Reports

FOR APRIL, MAY, AND JUNE, 1898.

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## D I G E S T .

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Where a case has already been given in the Digest for a preceding quarter, the reference to the additional report is given in the Index only, after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

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#### Account:—

- (i.) **C. A.**—*Periodical Payments in Foreign Currency—Rate of Exchange.*—A contract made abroad provided for periodical payments in foreign money. In an action for account it was held (Williams, L.J., dissenting), that the balance only was to be converted into English money, not the periodical payments at the rate of exchange current when each became due.—*Manners v. Pearson*, L.R. [1898] 1 Ch. 581; 76 L.T. 482.

#### Administration:—

- (ii.) **P. D.**—*Land Transfer Act, 1897 (60 & 61 Vict., c. 65)—Jus Mariti—Heir-at-Law.*—When the real estate of a married woman deceased is much larger than the personalty, the Court will be inclined to grant letters of administration to the heir-at-law rather than to the husband under sect. 2, sub-sect. 4 of the Act.—*In the Estate of Mary Arden*, L.R. [1898] P. 147; 78 L.T. 536.
- (iii.) **P. D.**—*Land Transfer Act, 1897—Citing Next-of-Kin.*—Where a person died after 1st January, 1898, intestate, possessed of realty only, letters of administration were granted to the heir-at-law without citing the next-of-kin.—*In the matter of Abraham Barnett*, L.R. [1898] P. 145; 78 L.T. 391.
- (iv.) **P. D.**—*Land Transfer Act, 1897 (60 & 61 Vict., c. 65), s. 78—Citing Heir-at-Law.*—Where a wife died after 1st January, 1898, intestate as to realty, but having made a will of personalty of which the husband was executor, and he died shortly after, intestate and without having proved her will, the Court made a grant *ad colligenda bona* to the husband's next-of-kin, moulded so as to apply to realty, until the wife's heir could be cited.—*In the goods of Mary Ann Roberts*, L.R. [1898] P. 149; 78 L.T. 390.
- (v.) **P. D.**—*Delegatus Potest Delegare.*—Where for purposes of administration a power in accord with the law of the deceased's domicile was given authorising an attorney to appoint an attorney, the Court granted

letters of administration to the delegate. *Quebec and Richmond Railway v. Quinn* (12 Moo P.C.C. 232) followed.—*In the goods of Abdul Hamid Dey (deceased)*, 78 L.T. 202.

- (i.) **P. D.**—*Wife Passed Over*.—Where the wife of an intestate had many years before the death of her husband gone to live with another man, the Court, without citing her, granted letters of administration to a child of the marriage.—*In the goods of John Stevens*, L.R. [1898] P. 126; 78 L.T. 889.
- (ii.) **P. D.**—*Grant to Creditor*.—A person who had charged a reversionary interest died intestate in 1878 before it fell into possession. A grant was made in favour of the person entitled to the charge, the executor of the next-of-kin of the deceased concurring.—*In the goods of Lowe*, 78 L.T. 566.

### Adulteration of Food:—

- (iii.) **Q. B. D.**—*Skimmed Milk—Sufficiency of Disclosure—Sale of Food and Drugs Act, 1875* (38 & 39 Vict., c. 68), s. 9.—Whether a disclosure of an alteration in an article of food has been full enough to satisfy sect. 9 of the Act is question of fact, and where magistrates decided that it was not a sufficient disclosure to describe as “skimmed,” milk sold from which 97 per cent. of fat had been abstracted, the Court held that there was no appeal. *Jones v. Davies* (69 L.T. 492) explained.—*Petchey v. Taylor*, 78 L.T. 501.

### Agreement:—

- (iv.) **P. C.**—*New Zealand, Appeal—Construction of Agreement*.—The respondents agreed to take all the output of the appellant's works for three years and during that time not to “assist or be in any way concerned or interested in the erection or use of” similar works. Held, that in agreeing to take the output of other works and to purchase such works after the expiration of the three years, and in lending money to the owner, the respondents had not broken the agreement.—*Southland Frozen Meat Co. v. Nelson Bros.*, 78 L.T. 363.

### Arbitration:—

- (v.) **C. A.**—*Special Case subsequent to Award—Mistake of Law—Arbitration Act, 1889* (52 & 53 Vict., c. 49), ss. 10, 19.—Where no request has been made to an arbitrator, before award, to state a case, he cannot be directed to do so by the Court; and an award will not be remitted to him for reconsideration on the ground of mistake in law. *Quere*, whether an agreement between parties not to apply for a special case is valid.—*In re An Arbitration between Montgomery, Jones & Co. and Liebenenthal & Co.*, 78 L.T. 406.
- (vi.) **C. D.**—*“Taking other Steps in the Proceedings”—Arbitration Act, 1889*, s. 4.—The filing by a defendant of affidavits in answer is not a step in the proceedings within sect. 4 of the Arbitration Act. *Ives v. Williams* ([1894] 7 Ch. 478; 70 L.T. 674); *Brighton Marine Palace v. Woodhouse* ([1893] 7 Ch. 478; 68 L.T. 600) considered.—*Zalinoff v. Hammond*, 78 L.T. 456.

### Assignment:—

- (vii.) **C. D.**—*Judicature Act, 1873* (36 & 37 Vict., c. 66), s. 25, sub-s. 6.—The following was held not to be absolute assignment within the terms of the Judicature Act: “In consideration of money advanced from time to time we hereby charge the sum of £1,080, which will become due to us from . . . on the completion of the above buildings, as security for the advances, and we hereby assign our interest on the above-mentioned sum until the money with added interest be paid to you.” Decision of Court below reversed.—*Durham Bros. v. Robertson*, L.R. [1898] 1 Q.B. 765; 78 L.T. 488.

- (i.) **H. L.**—*Assignment of Share in Fund—Mortgage—Keeping Alive Incumbrance*.—Where, after a share in a fund is assigned with notice, a payment out of the fund is improperly made, the rights, *inter se*, of parties entitled to the fund are not affected; and where such a share is mortgaged and the mortgage and the right to the balance of the share are assigned to the same person, the incumbrance will be held to be kept alive unless a contrary intention as shewn. **21**, 79, iv. *Locking v. Parker* (27 L.T. 635; 8 Ch. 80) followed; *Toulmin v. Steere* (3 Mer. 210) distinguished.—*The Liquidation Estates Purchase Co. v. Willoughby and Others*, L.R. [1898] A.C. 321; 78 L.T. 329.

**Bakehouse :—**

- (ii.) **Q. B. D.**—*Underground Bakehouse—Factory and Workshop Act, 1895* (58 & 59 Vict., c. 37), ss. 27 (3), 55.—The Factory and Workshop Act, which came into operation on 1st January, 1896, enacts (sect. 27 (3)) that "a place underground shall not be used as a bakehouse unless it is so used at the commencement of this Act." In February, 1896, the appellants took such a place which had since 1879 been used as a bakehouse but had been unoccupied since October of the previous year. *Held*, reversing the magistrates' decision, that the bakehouse was within the protection of the Act.—*Schwerzerhof v. Wilkins*, L.R. [1898] 1 Q.B. 640; 78 L.T. 229.

**Bankruptcy :—**

- (iii.) **G. A.**—*Secured Creditor—Omission to Value Security—Bankruptcy Act, 1883* (46 & 47 Vict., c. 52), Sched. 1, r. 10.—Decision of Court below (**23**, 62, vii.) affirmed.—*In re Piers*; *e. p. C. P. Piers*, L.R. [1898] 1 Q.B. 627; 78 L.T. 314.
- (iv.) **C. A.**—"Order and Disposition"—*Bankruptcy Act, 1883*, s. 44 (iii.).—By a trade arrangement English shippers supplied good to a Spanish house on a three months' open credit, receiving at the end of that time acceptances at three months. The shippers were in the habit of obtaining advances from their bankers to the amount of their shipment on the security of a copy of the invoice, a duplicate of the bill of lading, and a draft at six months on the Spanish firm. This draft was not sent for acceptance, nor was notice given to the Spanish firm by the bankers, but at the end of the open credit the draft was withdrawn by the English firm, who substituted a three months' draft on the Spanish house, which was forwarded by the bankers for acceptance. The English firm were adjudicated bankrupts. *Held*, that the debts due by the Spanish firm not secured by bills were in the order and disposition of the bankrupts, and were divisible amongst their creditors.—*In re Goetz, Jonas & Co.*; *e. p. The Trustees*, L.R. [1898] 1 Q.B. 787; 78 L.T. 399.
- (v.) **C. A.**—*Debt Contracted with Notice of Act of Bankruptcy—Bankruptcy Act, 1883*, ss. 30, 37.—A claim on account of a debt incurred by a debtor after he has, to the knowledge of the creditor, committed an act of bankruptcy is a "debt provable in bankruptcy" under sect. 37, subsect. 3; but by force of subsect. 2 cannot be proved; and the bankruptcy is released from liability on account of it by an order of discharge.—*Buckwell v. Norman*, L.R. [1898] 1 Q.B. 622; 78 L.T. 248.
- (vi.) **C. D.**—*Priority under Middlesex Registration Act* (7 Anne, c. 20), s. 1.—*Bankruptcy Act, 1883*, ss. 20 (1), 54 (1 & 4), and 121.—An undischarged bankrupt mortgaged property in Middlesex to which he was entitled at the date of his bankruptcy, and the mortgagee registered the deed. *Held*, that the order of the Court adjudicating the debtor a bankrupt was a "conveyance," and this not having been registered, the title of the trustee in bankruptcy was void against the mortgagee.—*In re Calcott and Elvin's Contract*, 78 L.T. 417.

- (i.) **C. A.**—*Solicitor*—"Money recovered or preserved"—*Charging Order under s. 28 of the Solicitors Act, 1860* (23 & 24 Vict., c. 127).—Judgment of the Queen's Bench Division (23, 80, iii.) affirmed.—*In re Humphreys; e. p. Lloyd-George and Another*, L.R. [1898] 1 Q.B. 520; 78 L.T. 182.
- (ii.) **C. D.**—*Covenant to Pay Rent and Indemnity Bankrupt—Assignment by Trustees*.—P, an original lessee, assigned to A, who assigned to B, each assignee covenanting to pay the rent and indemnify his assignor. A became bankrupt, B died, and his executors having assigned to a man of straw, P had to pay the rent. P proved against the estate of A for the estimated amount of future rent for which he might be liable, and the trustee assigned to him the benefit of B's covenants. Held that the right of indemnity was a *chose in action*, and the assignee could recover from B the whole amount for which A's estate was liable without regard to the sufficiency of its assets. *Ashdown v. Ingamells* (5 Ex. Div. 280; 43 L.T. 424) followed.—*In re Perkins; Poyser v. Beyfus*, 78 L.T. 216.

### **Bastardy:—**

- (iii.) **Q. B. D.**—*Three Summonses—Exhaustion by one hearing*.—Application was made on the same day to three separate magistrates for a bastardy summons, and three summonses were subsequently issued. The first was heard and dismissed without prejudice to further application. The second was not proceeded with, and on the third, which was heard fourteen months after the application, an order was made. Held that a rule must be made absolute for a *certiorari* to quash the order, as the hearing of one summons exhausted all, and the order was made out of time.—*Reg. v. Robinson and Another, Justices (and Kirkham); e. p. Corbishley*, L.R. [1898] 1 Q.B. 734; 78 L.T. 350.

### **Bill of Lading:—**

- (iv.) **C. A.**—*Master's negligence excepted—Master part owner*.—Where an exception in a bill of lading is "the neglect or default of pilot, master, or crew in the navigation of the ship," a master who is part owner may relieve himself of the consequences of his own negligence.—*Westport Coal Co., Ltd. v. McPhail*, 78 L.T. 490.

### **Bill of Sale:—**

- (v.) **C. A.**—*Bills of Sale Act, 1882, s. 7—Demand for Receipt for Rent to be sent to Grantee*.—A demand by the grantee of a bill of sale to have the receipt for the last quarter's rent sent to him by post is not a demand to produce within sect. 7, sub-sect. 4. Where the rent has not been paid because the landlord has not demanded it, the grantor has not "without reasonable excuse" refused to produce the receipt. Where the grantee has under such circumstances made an entry to realise his security he may be fixed with costs, and the surrender of the security may be ordered on payment of principal with interest to date. *E. p. Cotton* (11 Q.B.D. 301; 49 L.T. 52) approved.—*In re The Bills of Sale Act, 1882; Wickens v. Shuckburgh*, L.R. [1898] 1 Q.B. 543; 78 L.T. 218.
- (vi.) **Q. B. D.**—*Blank Date in Filed Copy—Bills of Sale Act, 1878* (41 & 42 Vict., c. 31), s. 10, sub-s. 2.—A bill of sale is not void because in the filed copy the date of execution has been omitted, provided that in the original and in the affidavit the date is properly filed in.—*Thomas v. Roberts; Smith (claimant)*, L.R. [1898] 1 Q.B. 657.

### **Brewer's Lease:—**

- (vii.) **C. A.**—*Tied House—Severance*.—A covenant of the lessee of a tied public house to buy beer exclusively of the lessor does not while the lessor carries on the business of a brewer, pass to the assignee of the reversion of the lease. Decision of the Court below (23, 64, ii.)

reversed. *Clegg v. Hands* (44 C.D. 508; 62 L.T. 502) and *Doe d. Calvert v. Reid* (10 B. & C. 849) discussed.—*Birmingham Breweries, Limited v. Jameson*, 78 L.T. 512.

### Building Society:—

- (i.) **C. A.**—*Winding-up—Priorities—Building Societies Act, 1836* (6 & 7 Wm. 4, c. 32).—In the winding-up of a building society it was held, on an interpretation of the rules and of the scheme of arrangement, that the widows and children of members who had given notice of withdrawal were entitled to be paid in priority to other members, and that *inter se* they were to rank according to the dates of death of the members through whom they claimed.—*In re The West London, &c., Building Society*, 78 L.T. 393.

### Burial Ground:—

- (ii.) **C. D.**—*Approval by Secretary of State—Burial Acts, 1852* (15 & 16 Vict., c. 85), ss. 25, 26, 28; 1853 (16 & 17 Vict., c. 134), ss. 1, 6; 1855 (18 & 19 Vict., c. 128), s. 9.—Where by sect. 6 of the Act of 1853 the Secretary of State's approval would be required in the case of a "new burial ground," the like approval is necessary to an extension of an existing burial ground.—*Ward v. Corporation of Portsmouth*, 78 L.T. 255.

### Charity:—

- (iii.) **C. D.**—*Schools—Charitable Trusts Act, 1853* (16 & 17 Vict., c. 137), ss. 17, 62.—In the words "any cathedral, collegiate, chapter, or other schools" at the end of sect. 62 of the Charitable Trusts Act, 1853, "other schools" means schools *ejusdem generis*. See 23, 46, iii.—*In re Stockport Ragged Industrial and Reformatory School, No. 2*, L.R. [1898] 1 Ch. 610; 78 L.T. 290.

### Churchwarden:—

- (iv.) **C. A.**—*Parish Lands—Payments by Churchwardens—No indemnity—Charitable Trusts Amendment Act, 1855* (18 & 19 Vict., c. 124), s. 29.—Churchwardens who were trustees to receive rents and profits of parish estates expended £3,000 of their own money in parish affairs. Subsequently the parish estates became vested in the Official Trustee of Charity Lands. Held, that the churchwardens were only annual officers and were not entitled to be indemnified out of the future income of the charity.—*Fell v. Official Trustee of Charity Lands*, 78 L.T. 474.

### Colonial Law:—

- (v.) **P. C.**—*New South Wales—Conditional Purchase of Lands—Forfeiture—Crown Lands Acts, 1884* (48 Vict., No. 18); 1889 (53 Vict., No. 21).—The Crown Lands Act does not take away the authority of the Minister of Crown Lands to declare a conditional purchase of land to be forfeited for non-compliance with the statute as to improvements.—*Attorney-General for New South Wales v. Walters*, 78 L.T. 272.
- (vi.) **P. C.**—*Street vested in Corporation—Tramway—Compensation.*—By the Sydney Corporation Act, 1879 (43 Vict., No. 3), all public ways in the city are vested in the Council; but it was held that this did not entitle them to compensation for a part of a street taken under a local Act for the purposes of a tramway.—*The Municipal Council of Sydney v. Young*, 78 L.T. 365.
- (vii.) **P. C.**—*New South Wales—Right of Crown to Dismiss Civil Servant—Civil Service Act, 1884* (48 Vict., No. 24)—*Public Service Act, 1895* (59 Vict., No. 25).—The Public Service Act, 1895, of New South Wales enacts that nothing in the Act or in the Civil Service Act of 1884, shall be held to restrict the right of the Crown as it existed before the passing of the Civil Service Act to dismiss a civil servant. Held that the Act was not retrospective, and that a civil servant dismissed at any time



between the passing of the two Acts could only be dismissed in accordance with the provisions of the former Act. *Midland Railway Co. v. Pye* (10 C.B., N.S. 179) approved.—*Young v. Adams*, 78 L.T. 506.

- (i.) **P. C.**—*New South Wales—Civil Service Act, 1884—Abolition of Office.*—The Civil Service Act does not affect the right of the Crown to abolish a civil office, and does not oblige it to employ in another department a civil servant whose office is abolished.—*Waller v. Young*, 78 L.T. 508.

### Company :—

- (ii.) **C. A.**—*Sale of Undertaking—Compensation to Directors—Notice—Companies Clauses Act, 1845* (8 Vict., c. 16), ss. 71, 85, 86, 138.—An agreement for the transfer of the undertaking of a company approved by the shareholders at an extraordinary meeting, is not *ultra vires* by reason of one of the conditions made by the directors being a direct payment to themselves and to certain officers "as compensation for loss of office," provided that the condition is mentioned on the notices required to be issued under sect. 71 of the Companies Clauses Act, 1845. Decision of the Court below varied.—*Kaye v. The Croydon Tramways Co.*, L.R. [1898] 1 Ch. 358; 78 L.T. 237.
- (iii.) **C. A.**—*Winding-up—Right to Inspect Register of Shareholders—Companies Act, 1862* (25 & 26 Vict., c. 89), s. 32.—A stranger has no right to inspect the register of shareholders of a company which is being wound-up voluntarily.—*In re Kent Goldfields Syndicate*, L.R. [1898] 1 Q.B. 754; 78 L.T. 443.
- (iv.) **C. A.**—*Debentures Charged on all Property—Uncalled Capital—Companies Act, 1862*, ss. 38, 75.—Where a company issued debentures charged on all its property present and future, it was held that the charge did not cover uncalled capital. *Streatham and General Estates Company* (22, 60, iv.) approved.—*In re The Russian "Spratt's," Limited; Johnson v. Same*, 78 L.T. 480.
- (v.) **C. D.**—*Reduction of Capital.*—Where an incorporated society in accordance with amendments made in its articles of association prepared a scheme, approved by a majority of shareholders, for a reduction of capital and a modification of preference rights, the Court sanctioned the scheme and approved of minutes for registration.—*The National Dwellings Society, Limited*, 78 L.T. 144.
- (vi.) **C. D.**—*Fully-Paid Shares—Contract Required by s. 25 of Companies Act, 1867.*—A contract to be registered under sect. 25 of the Companies Act, 1867, must specify the vendor, the purchaser, the price to be paid and the property which is to be purchased.—*In re Maynards, Limited*, L.R. [1898] 1 Ch. 515; 78 L.T. 150.
- (vii.) **C. D.**—*Winding-up—"Undistributed Assets"—Companies Arrangement Act, 1870* (33 & 34 Vict., c. 104), s. 2—*Winding-up Act, 1890* (53 & 54 Vict., c. 63), s. 15, sub-s. 3.—In the voluntary winding-up of a limited company, the Court approved of a scheme by which surplus capital was to be applied to the maintenance of property which was to be the subject of future realisation. The Board of Trade moved for an order on the liquidator to pay the surplus to the Companies Liquidation Account. Held, that the money was not "undistributed assets" within the meaning of sect. 15 of the Winding-up Act, 1890.—*In re Land Mortgage Bank of Florida, Limited*, L.R. [1898] 1 Ch. 444; 78 L.T. 156.
- (viii.) **C. A.**—*County Court—Winding-up—Prohibition—Companies (Winding-up) Act, 1890*, ss. 1, 6.—Sect. 1 of the Winding-up Act, 1890, confers on a county court the powers of the High Court for the purposes of the Act, and prohibition therefore will not lie in respect of an order for committal for contempt made by a county court judge in the course of a winding-up.—*In re New Par Consols, Limited*, L.R. [1898] 1 Q.B. 669; 78 L.T. 312.

- (i.) **C. D.**—*Winding-up Act*, 1890, s. 10—*Misfeasance*.—Certain persons bought debentures of a company in liquidation, and subsequently bought an asset of the company called "Olympia" at a figure which gave a large profit on the debentures which they held. They then entered into an agreement for the sale of Olympia to an intended company of which they became directors. The prospectus disclosed the price which they had given for the property and the price to be paid by the company, and also that the directors were the vendors; but no mention was made of the profit obtained on the debentures. *Held*, that they were not promoters and were not liable to account for this profit.—*In re Olympia, Limited*, 78 L.T. 159.
- (ii.) **C. D.**—*Winding-up—Distribution of Surplus Assets*.—A gas company formed by a deed of settlement was subsequently incorporated under the Companies Act, 1862. Its deed provided that on a winding-up, any clear residue should be divided amongst the proprietors in proportion to their respective shares. All the shares were of the same nominal amount, but some were only partially paid up. *Held*, that after equalisation by the return of all the capital paid up, the surplus remaining must be divided in proportion to the nominal amounts of the shares. *Somes v. Currie* (1 K. & J. 603) and *Sheppard v. The Scinde Railway* (57 L.T. 585) distinguished.—*In re Driffield Gas Light Co.*, L.R. [1898] 1 Ch. 451; 78 L.T. 162.
- (iii.) **C. A.**—*Winding-up—Companies Act*, 1879, s. 5.—Decision of Court below (23, 66, ii.) affirmed. *Newton v. Debenture-holders of Anglo-Australian Co.* (20, 68, iii.) distinguished.—*In re The Mayfair Property Co., Limited*; *Bartlett v. Same Co.*, 78 L.T. 302.
- (iv.) **C. D.**—*Directors—Ultra Vires—Statute of Limitations—Trustees Act*, 1888 (51 & 52 Vict., c. 59), s. 8—*Manchester, Sheffield and Lincoln Railway Act*, 1891 (54 & 55 Vict., c. 114), ss. 45, 47.—An action was brought to compel directors of the Manchester, Sheffield, and Lincoln Railway to repay sums which they had expended *ultra vires*. In 1890 certain stocks in the Wrexham Railway were acquired by nominees of the Manchester, Sheffield, and Lincoln Railway with money provided by the railway in two sums, one of which was paid more than six years before the action was commenced. Parliamentary powers to make the purchase were not obtained till after the money had been paid. *Held*, that as to the first payment the Statute of Limitations afforded a good defence; and as to the second, that the plaintiffs who had bought shares on purpose to bring the action, were not the parties to proceed.—*Whitwham v. Watkin*, 78 L.T. 188.
- (v.) **C. A.**—*Winding-up—Promoter and Officers—Secret Profit*.—*Held*, on the facts stated in 23, 66, i., and reversing the decision there related, that the appellant was a promoter, and that the money was received by him as such, not for anything which he had done or omitted to do as secretary; and that the promotion money being a lump sum, the shareholders had no concern with its distribution, and there was therefore no cause of action against the appellant.—*In re Sale Hotel and Botanical Gardens, Limited*; *e. p. Heskest*, 78 L.T. 368.
- (vi.) **H. L.**—*Contract to take Debentures*.—A breach of agreement to pay instalments on debentures does not constitute a debt to the issuing company. Decision of the Court below on other points of the case (22, 96, iii.) affirmed.—*South African Territories Co. v. Wallington*, L.R. [1898] A.C. 809; 78 L.T. 426.
- (vii.) **C. D.**—*Winding-up—Creditor-Contributory—Bankruptcy Acts*, 1883, 38—*Companies Act*, 1862, ss. 16, 38, 101—*Judicature Act*, 1875, s. 10.—The Auriferous Properties Co. owed money to one of its shareholders, the Gold Properties Co. On both companies being wound-up it was *held*, that the debt could not be set off against calls.—*In re Auriferous Properties, Limited*, L.R. [1898] 1 Ch. 691.

- (i.) **C. D.**—*Winding-up—Retrospective Effect of Preferential Payments in Bankruptcy Amendment Act, 1897* (60 & 61 Vict., c. 19).—The Preferential Payments Act, which gives to workmen's wages and certain debts a priority over the claims of debenture-holders under a floating charge, is not retrospective.—*In re Waverley Typewriter, Limited; D'Este v. Waverley Typewriter*, L.R. [1898] 1 Ch. 699; 78 L.T. 593.

#### Contract:—

- (ii.) **C. A.**—*Building Contract Abandoned—Quantum Meruit.*—The plaintiff, who had contracted to raise buildings on the defendant's land for a lump sum, abandoned the contract before the work was completed, and sued on a *quantum meruit*. *Held*, that the defendant had made no new contract to pay for unfinished buildings. *Munro v. Butt* (8 E. & B. 788) followed.—*Sumpter v. Hedges*, L.R. [1898] 1 Q.B. 678; 78 L.T. 378.
- (iii.) **C. D.**—*Contract of Exclusive Service—Unreasonable.*—A traveller who had agreed not to do any business with any other person than the plaintiff for ten years, left the plaintiff and entered into the employment of another person. *Held*, that the negative stipulation was unreasonable and ought not to be enforced.—*Farman v. Bartholomew*, L.R. [1898] 1 Ch. 671.

#### County Council:—

- (iv.) **Q. B. D.**—*Death of Candidate between days of Nomination and of Poll—Corporations Act, 1882* (45 & 46 Vict., c. 50), ss. 58, 70—*Ballot Act, 1872* (35 & 36 Vict., c. 33), s. 1.—In a county council election, if one of the candidates dies between the day of nomination and the polling day, it is the duty of the returning officer to countermand the notice of the poll, and the Court on his application can grant a mandamus to him to hold the election on a day fixed by the Court.—*Reg. v. Stewart*, L.R. [1898] 1 Q.B. 552; 78 L.T. 256.
- (v.) **Q. B. D.**—*Bye-Law against Betting in Streets.*—The Court held to be valid a bye-law made by a county council under sect. 16 of the Local Government Act forbidding any person to "frequent any street or public place and use the same for the purpose of betting or wagering, or agreeing to bet or wager either on behalf of himself or any other person."—*Jones v. Walters*, 78 L.T. 167.
- (vi.) **Q. B. D.**—*Bye-Law—Validity—Local Government Act, 1888, s. 16.*—A bye-law of a county council was held not to be invalid or *ultra vires* which directed that "no person shall sound or play upon any musical or noisy instrument, or sing in any public place or highway within fifty yards of any dwelling house, after being required by any constable or by an inmate of such house personally or by his or her servant to desist." *Dissentiente, Mathew, J.*—*Brownscombe v. Johnson*, 78 L.T. 265.

#### County Court:—

- (vii.) **Q. B. D.**—*Practice—Joinder of Trustee in Bankruptcy as co-Plaintiff—Security for Costs—County Court Act, 1888* (51 & 52 Vict., c. 43), ss. 65, 94.—Where in an action remitted to the county court, a trustee in bankruptcy who is joined as a co-plaintiff before the writ and order are lodged with the county court registrar, cannot be required to give security for costs.—*Hemming and Others v. Davies*, L.R. [1898] 1 Q.B. 660; 78 L.T. 500.

#### Criminal Law:—

- (viii.) **Q. B. D.**—*Practice—Summary Jurisdiction Act, 1879* (42 & 43 Vict., c. 49), s. 17 (1) (2).—Where a defendant is charged with an offence falling within sect. 17 (1) of the Summary Jurisdiction Act, the Bench should in all cases, even if it is his intention to plead guilty, inform him in accordance with sect. 17 (2) of his right to trial by jury. Where

this was not done, a conviction was quashed, although the prisoner had pleaded guilty after evidence had been given.—*Reg. v. Cockshott and Others*; *e.p. Rickerby*, L.R. [1898] 1 Q.B. 582; 78 L.T. 168.

- (i.) **Q. B. D.**—*Wilful Damage—Malicious Damage Act, 1861* (24 & 25 Vict., c. 97), s. 52.—Wilful damage within the meaning of sect. 52 is committed by an act done with knowledge that damage to the property must ensue, irrespective of intention to injure the owner of the property. *Hall v. Richardson* (54 J.P. 345) disapproved.—*Roper v. Knott*, L.R. [1898] 1 Q.B. 868; 78 L.T. 594.

**Damages, Measure of:—**

- (ii.) **C. A.**—*Breach of Warranty*.—On the facts stated in 23, 69, iv., the Court held, varying the judgment of the Q.B.D., that judgment must be entered for the plaintiff for £50.—*Ashworth v. Wells*, 78 L.T. 136.

**Ecclesiastical Law:—**

- (iii.) **C. C. of Llandaff**.—*Faculty—Footpath Across Churchyard to be Closed One Day in Year*.—In a faculty for a footpath across a churchyard with a right of way for the public, provision was made for the path being closed on one day in the year to show limitations on its use.—*Cardiff*; *Vicar and Churchwardens of St John's v. Parishioners of Same*, L.R. [1898] P. 155.

**Election:—**

- (iv.) **O. D.**—*Will Earlier than Wills Act—Construction*.—A settlor who had covenanted to convey to the uses of his marriage settlement, dated 1825, property which he was under contract to purchase, subsequently took a conveyance of it to himself in fee in order to bar dower. By his will, dated earlier than the Wills Act, he devised this property to the same uses and trusts as were declared by his settlement, and he disposed of all his other real estate in a residuary devise. The uses of the settlement failed, with the exception of an ultimate limitation to the use of the settlor and his heirs. Held, that the specific devise did not dispose of this ultimate limitation; but that the settlor retained a reversion in himself which passed under the residuary devise; and that the heir was not put to his election.—*Jacob v. Jacob*, 78 L.T. 451.

**Endowed Schools:—**

- (v.) **P. C.**—*Endowed Schools Act, 1869* (32 & 33 Vict., c. 56), ss. 19, 39—*Parents of Scholars—Locus Standi*.—Parents of children receiving education at an endowed school are not persons "directly affected" within sect. 39 of the Act by a new scheme approved by the Charity Commissioners. *In re Hemsworth School* (12 App. Case 444; 56 L.T. 812) followed. When a petition against a scheme is dismissed, costs are not given to the Charity Commissioners.—*Colchester Grammar School*; *In re A Scheme for the Administration of*, 78 L.T. 509.

**Factory:—**

- (vi.) **Q. B. D.**—*Accident to Workman through own Carelessness—Unfenced Machinery—Factory and Workshop Act, 1878* (41 Vict., c. 16), s. 82.—Where an accident happens to a workman through machinery in a factory being unfenced, the employer is not relieved of liability by the fact that the workman's own disobedience brought about the mishap.—*Blenkinsop v. Ogden*, L.R. [1898] 1 Q.B. 768; 78 L.T. 554.
- (vii.) **Q. B. D.**—*Factory and Workshop Act, 1878* (41 Vict., c. 16), ss. 17, 83, 86, 87, 94—*Young Person Working during Meal Time*.—If a young person employed in a factory, works therein for his own amusement and contrary to orders, during meal time, the occupier of the factory will be liable to a penalty under sect. 83, unless he can shew that some other person was liable (sects. 86 and 87).—*Prior v. Slathwaite Spinning Co.*, L.R. [1898] 1 Q.B. 881; 78 L.T. 532.

**Gaming:—**

- (i.) **Q. B. & C. A.**—“Cover” in Stock Transactions—*Gaming Act, 1845* (8 & 9 Vict., c. 109), s. 18.—Money was deposited as cover with an outside broker in a gaming transaction in stocks which resulted in a profit to the depositor. *Held*, that the depositor could reclaim the cover.—*In re Cronmire*; *e. p. Waud*, 78 L.T. 170, 483.
- (ii.) **C. C. R.**—“Place”—*Trespasser using an Archway for Betting—Betting Act, 1853* (16 & 17 Vict., c. 119), s. 1.—A passage or archway may be a “place” within sect. 1 of the Betting Houses Act, and a “trespasser” may be convicted of using such a place for betting purposes. *Hawke v. Dunn* (22, 97, vii.), approved; *Powell v. Kempton Park*, (23, 7, iv.), distinguished.—*Reg. v. Humphrey* L.R. [1898] 1 Q.B. 875; 78 L.T. 360.
- (iii.) **Q. B.**—*Bill given for Gaming Transaction.*—The acceptor of a bill given for a debt of honour who had been called upon to pay, was held not entitled to recover from the drawer.—*Crawley v. White*, 78 L.T. 167.

**Game Laws:—**

- (iv.) **Q. B. D.**—*Trespass in pursuit of Game—Game Act, 1861* (1 & 2 Wm. IV., c. 32), s. 30.—Sect. 30 of the Act provides that any person charged with trespassing for game may set up anything which would have been a defence to an action at law for trespass. The appellants had received leave from the wife of the occupant of land over which her husband had no sporting rights, leave to kill rabbits, but they had engaged in coursing hares. *Held*, that they had not shewn that they were within the proviso.—*Taylor and Others v. Jackson*, 78 L.T. 555.

**Gas Company:—**

- (v.) **P. C.**—*Consumer's Right to Sue Gas Company for not Reducing Price.*—A private consumer has no right of action for overcharge against a gas company which has not fulfilled a statutory obligation to reduce its price if a local corporation has the right to audit the company's accounts.—*Johnson and Others v. Consumers' Gas Co. of Toronto*, 78 L.T. 270.

**Highway:—**

- (vi.) **Q. B. D.**—*Liability to Repair ratione tenuræ.*—The plaintiff, in crossing a stile in a public footway through a farm of which the defendant was the yearly tenant, slipped upon steps worn out with use and broke his leg. Evidence was given that the defendant and previous occupiers had done slight repairs to the path and the steps, and there was no proof that the parish had ever done any; but it was held, that there was not sufficient to warrant the conclusion that the defendants were liable to repair *ratione tenuræ*.—*Rundle v. Hearle*, 78 L.T. 561.

**Husband and Wife:—**

- (vii.) **C. D.**—*Will of Married Woman—Property of which she was not Competent to Dispose—Probate to Husband—Question of Assent—Married Women's Property Act, 1882* (45 & 46 Vict., c. 75), s. 1.—By force of Probate Rules 15 and 16, a husband who takes out probate or letters of administration with will annexed is not deemed to assent to a testamentary disposition by his wife of property over which she had not absolute power.—*In re Atkinson*; *Waller v. Atkinson*, L.R. [1898] 1 Ch. 637; 78 L.T. 817.
- (viii.) **Divorce.**—*Variation of Marriage Settlement.*—Where a marriage had been dissolved through the wife's misconduct, the Court out of property brought into settlement by the wife, compensated the children of the marriage who had suffered detriment in consequence of the dissolution.—*Newall v. Newall and Platt*, 78 L.T. 203.

- (i.) **Divorce.**—*Variation of Marriage Settlement.*—Where a marriage settlement gave power to a wife to resettle if she survived her husband, the Court made an order (following *Noel v. Noel*, 10 P.D. 179, but thinking it surplusage) that during his life she, who had been divorced and had remarried, should not vary the settlement. Maintenance to a child of the dissolved marriage was made without the condition that he should reside with his father.—*Branton Day v. Branton Day and Erskine*, 78 L.T. 358.
- (ii.) **Divorce.**—*Summary Jurisdiction (Married Women) Act, 1895—Appeals—Depositions.*—In appeals under the Act the Court should be supplied with notes of the evidence of witnesses before the magistrates, and of the magistrates' reasons for their decision.—*Robinson v. Robinson*, L.R. [1898] P. 153; 78 L.T. 392.
- (iii.) **Divorce.**—*Costs against Co-respondent.*—The question of condemning a co-respondent in costs is one for the discretion of the Court. There appears to be no general rule.—*Robinson v. Robinson and Wilson*, 78 L.T. 391.
- (iv.) **Divorce.**—*Nullity of Marriage—20 & 21 Vict., c. 85, s. 35—Provision.*—A petitioner is entitled to a declaration of nullity of marriage on proof that the wife had a husband living at the time of the ceremony, and the Court has power to make provision for the children but not for the wife.—*Bateman v. Bateman (otherwise Harrison)*, 78 L.T. 472.
- (v.) **Divorce.**—*Conduct conducing to Adultery.*—A husband will not lose his right to divorce though his conduct may have conduced to the continuance of an immorality on the part of his wife commenced prior to such conduct.—*Millard v. Millard and Bastone*, 78 L.T. 471.
- (vi.) **Divorce.**—*Pauper Petitioner—Queen's Proctor—Costs.*—A pauper petitioner who is unsuccessful on the intervention of the Queen's Proctor is liable to the costs.—*White v. White (the Queen's Proctor shewing cause)*, L.R. [1898] P. 124.
- (vii.) **Divorce.**—*Dissolution of Marriage—Adultery and Desertion.*—A wife was held entitled to a divorce whose husband had committed adultery and deserted her, and had not communicated with her for nine years, except to make a request, thought not to be *bonâ fide*, for resumption of cohabitation.—*Martin v. Martin*, 78 L.T. 568.
- (viii.) **Divorce.**—*Judicial Separation—Counterclaim for Restitution—36 & 37 Vict., c. 66, s. 24, sub-s. 3.*—A decree for restitution of conjugal rights cannot be claimed in an answer to a petition for judicial separation. A respondent's proper course is to file a cross petition.—*Wingfield v. Wingfield*, 78 L.T. 568.
- (ix.) **H. L.**—*Divorce—Practice—Irish Divorce Bill—Custody of Children.*—In an Irish Divorce Bill, though no separate action had been instituted to obtain custody of children, the House inserted a clause giving the custody to the innocent party. *Mrs. Addison's case* [1801] Macq. Prac., H.L. 598, followed.—*Hart's Divorce Bill*, L.R. [1898] A.C. 305.

#### Infant:—

- (x.) **Q. B. D.**—*A Racing Bicycle may be a necessary, for an apprentice earning 21s. a week.*—*The Clyde Cycle Company v. Hargreaves*, 78 L.T. 296.

#### Innkeeper:—

- (xi.) **Q. B. D.**—*Liability for Property of Guest.*—An hotel keeper is liable for the coat of a guest taken from the dining-room.—*Orchard v. Bush*, 78 L.T. 557.

#### Interpleader:—

- (xii.) **C. A.**—*Seizure—Withdrawal—Seizure by Second Execution Creditor.*—A claimant who under an interpleader order pays out the Sheriff,

acquires no property in the goods released, and they are immediately liable to further seizure by another execution creditor. In such a case the whole claim of the second execution creditor or the full value of the goods, whichever is the lesser sum, must be paid into Court before the Sheriff will be directed to withdraw.—*Kotchie v. Golden Sovereigns, Limited; Bright and Others (claimants)*, 78 L.T. 409.

#### International Law:—

- (i.) **C. D. & C. A.**—*Matrimonial Domicile—Change of Domicile—English Will of Husband*.—Two French subjects married to one another in France, subsequently obtained an English domicile. The husband died in England, having disposed of his property by will. The wife claimed under French law half of his movable property acquired during coverture. *Held*, that the law of acquired domicile prevailed over that of matrimonial domicile. *Lashley v. Hog* (4 Patons & Co. App. 581) followed. Decision of Court below reversed.—*In re De Nicols; De Nicols v. Curlier*, L.R. [1898] 1 Ch. 408; 78 L.T. 152, 541.

#### Justices:—

- (ii.) **Q. B. D.**—*Disqualification—Clerk to Justices accepting Office of Mayor*.—The office of justices' clerk is vacated *ipso facto* by the holder becoming a justice of the peace, *ex officio*, by accepting the office of mayor of a borough in the county.—*Key. v. Douglas*, L.R. [1898] 1 Q.B. 560; 78 L.T. 198.

#### Landlord and Tenant:—

- (iii.) **Q. B. D.**—*Claim to Equitable Lease*.—A letter from the landlord stating that he agreed to let the tenant keep possession of premises for ten years on paying a weekly rent, was held to be merely a personal arrangement between the parties under which no estate passed.—*Duxbury v. Sandiford*, 78 L.T. 230.
- (iv.) **Q. B.**—*Three years' agreement with option of renewal*.—A lessee who had sub-let premises for three years "with the option of renewal," sold his interest. The purchaser, who was not aware of the option till some time after the purchase, commenced an action of ejectment at the end of the term. *Held*, that he was affected with notice; that the option was vested in the tenant, but would be exhausted by its exercise; and that the renewal would be in duration and terms similar to the original agreement.—*Lewis v. Stephenson*, 78 L.T. 165.
- (v.) **C. D.**—*Covenant—Breach—Notice—Conveyancing Act, 1881* (44 & 45 Vict., c. 41), s. 14, sub-s. 1.—A claim by a lessor to possession of premises will fail if any item in a notice of breach, under sect. 14 of the Conveyancing Act, 1881, is not sufficiently definite. A notice to the lessee that he has "not kept the said premises well and sufficiently repaired and the party walls thereof" is insufficient; but a notice to remedy "within one month or a reasonable time thereafter" would not be insufficient, although by the terms of the lease the lessee was entitled to three months' notice. A breach of covenant is not waived by receipt of rent after notice of breach, and a lessor would be entitled to damages up to the date of demolition, even where the leased premises were pulled down by the local authority as dangerous.—*In re Serle; Gregory v. Serle; Itter's claim*, L.R. [1898] 1 Ch. 652; 78 L.T. 884.
- (vi.) **P. C.**—*Lease—Whether a Covenant is condition of Letting or of Lease*.—A lessor covenanted to lay down certain acres in grass within a year. In the lease was a declaration that "there shall not be implied in this lease any covenant or provision whatever on the part of either of the parties." *Held*, that the covenant was controlled by the declaration and was a condition of the letting not an incident of the relation of landlord and tenant, and that therefore the burden of it fell upon the

general estate of the lessor, not upon his specific devise. *Marshall v. Holloway* (5 Sim. 186) and *Mansel v. Norton* (22 C.D. 769; 48 L.T. 654) considered.—*Eccles and Others v. Mills and Others*, L.R. [1898] A.C. 360; 78 L.T. 206.

- (i.) **C. A.—Lease—Covenant—Breach.**—The lessee of a public house covenanted that he, his executors, administrators, or assigns, would not wilfully do anything to imperil the licence. A tenant of the assignee permitted drunkenness, and a renewal of the licence was, in consequence refused. *Held*, that the tenant of an assignee was not an assign, and that his conduct did not constitute a breach of covenant.—*Bryant v. Hancock & Co.*, L.R. [1898] 1 Q.B. 716; 78 L.T. 897.

**Lands Clauses Acts:—**

- (ii.) **H. L.—Railway—Superfluous Lands—Lands Clauses (Scotland) Act, 1845, s. 120.**—A railway company, before and after the expiration of the prescribed ten years, considered proposals for the sale by them of some land. The adjoining owner claimed it as "superfluous" land under sect. 120 of the Act. *Held*, that the question was one of mixed law and fact, and on the evidence the land had not become superfluous. *London and South Western Railway v. Blackmore* (1870) (4 H.L. 610) distinguished.—*Macfie v. Callender and Oban Railway*, L.R. [1898] A.C. 270.
- (iii.) **H. L.—Railway Company—Finality of Arbitrator's Award—Lands Clauses (Scotland) Act, 1845 (8 & 9 Vict., c. 19), s. 90—Railways Clauses (Scotland) Act, 1845 (8 & 9 Vict., c. 33), ss. 46, 49, 60.**—A railway company were entitled by their special Act, notwithstanding sect. 90 of the Lands Clauses (Scotland) Act, 1845, to take a portion only of a certain property if it could be severed without detriment to the remainder. An arbitrator decided that severance could not be effected without damage, and fixed compensation without regarding an offer of concessions by the company. *Held*, that the award, whether right or wrong, could not be reviewed until set aside by a proper process.—*Caledonian Railway v. Turcan and Others*, L.R. [1898] A.C. 256.

**Licensing:—**

- (iv.) **Q. B. D.—Application for New Licence—Right to Object without being Sworn—Certiorari—Mandamus.**—Where justices had granted a provisional licence without hearing in opposition a resident of the parish who declined to be sworn, a *certiorari* to quash was refused on the ground that the justices were sitting for administrative purposes only, and a rule *nisi* for a mandamus to them to hear and determine was discharged on the ground that they had a discretion to impose an oath.—*Reg. v. Sharman and Others*, L.R. [1898] 1 Q.B. 578; 78 L.T. 320.
- (v.) **Q. B. D.—Licensed Premises not used as such—Transfer—Althouse Act, 1828 (9 Geo. IV., c. 61), ss. 4 and 14—Certiorari—Mandamus.**—A person had yearly obtained a renewal of a beer licence for premises on which beer had not been sold and he had not resided for several years. *Held*, that the justices could not transfer the licence, and that though on the authority of *Reg. v. Sharman* (above) *certiorari* would not be granted, a writ of mandamus to hear and determine according to law would issue.—*Reg. v. Cotham and Others*; *Reg. v. Pilkington and Others*, L.R. [1898] 1 Q.B. 802; 78 L.T. 468.
- (vi.) **Q. B. D.—Grant of Licence on Payment of Money—Mandamus—Certiorari.**—A licence cannot be granted on condition that the licensee pays money for public purposes and a mandamus to hear and determine according to law will be issued against justices who grant a licence on such conditions. *Certiorari* to quash a grant so made is not applicable.—*Reg. v. Bowman and Others (Justices)*, L.R. [1898] 1 Q.B. 663; 78 L.T. 230.



- (i.) **Q. B. D.**—*Licensing Act, 1872 (35 & 36 Vict., c. 94, s. 18)*—*Refusal to Quit Premises*.—A person not drunken or disorderly cannot be convicted under sect. 18 of the Act for refusing to quit licensed premises.—*Dallimore v. Tutton*, 78 L.T. 469.
- (ii.) **Q. B. D.**—*Refusal to Transfer—Appeal—Costs—Alehouse Act, 1828 (9 Geo. IV., c. 61), ss. 27, 29*.—Quarter Sessions in allowing an appeal against a refusal of justices to transfer a licence ordered that the justices should pay the appellant's costs and that the treasurer of the county council should repay the justices. *Held*, that there was no jurisdiction under the Act to make the order.—*Reg. v. Justices of London; e. p. London County Council*, 78 L.T. 559.

#### Limitations, Statute of:—

- (iii.) **Q. B.**—*Parol Evidence to Connect Letters*.—Parol evidence is admissible to shew that one letter is in answer to another so as to form an acknowledgment to take a debt out of the Statute of Limitations.—*McGuffie v. Burleigh*, 78 L.T. 264.

#### Local Government:—

- (iv.) **Q. B. D.**—*Footways—Liability of Frontagers—Public Health Act, 1875 (38 & 39 Vict., c. 55), s. 149—Local Government Act, 1888 (51 & 52 Vict., c. 41), s. 11*.—A power given to a corporation by a local Act of 1871, to require at any time frontagers to make footways in a street, was *held*, following *Ashton-under-Lyne Corporation v. Pugh* (23, 73, vii.), not to be repealed by sect. 149 of the Public Health Act, 1875, or by sect. 11 of the Local Government Act, 1888; but when once a footpath had existed, it was also *held*, that the liabilities of the frontagers ceased.—*Lodge v. Huddersfield Corporation*, L.R. [1898] 1 Q.B. 847; 78 L.T. 422.
- (v.) **Q. B.**—*Notice to Provide Sufficient Closet Accommodation under Public Health Act, 1875 (38 & 39 Vict., c. 55), s. 36*.—A notice under sect. 36 to a house-owner to provide a sufficient water closet "according to the specification given by this notice," was *held* to be bad, as not permitting the owner to provide any other "sufficient" closet. *See Wood v. Widnes Corporation* (23, 73, vi.).—*Robinson v. Corporation of Sunderland*, 78 L.T. 194.
- (vi.) **C. D.**—*Opposition to Bill in Parliament—Costs—Borough Funds Act, 1872 (35 & 36 Vict., c. 91), ss. 2, 4, 8*.—A corporation which had opposed a bill in Parliament without having first complied with the formalities required by the Borough Funds Act, was *held* not to be entitled to apply the borough funds in payment of the costs.—*Attorney-General v. Swansea Corporation*, L.R. [1898] 1 Ch. 602; 78 L.T. 412.
- (vii.) **C. A.**—*Chief Constable and Licensing Appeal—Costs—Municipal Corporations Act, 1882 (45 & 46 Vict., c. 50), ss. 140 to 143; sched. 5, part 2, c. 5; 1872 (Borough Funds, 35 & 36 Vict., c. 91), s. 2*.—A Municipal Corporation cannot pay out of a borough fund in which there is no surplus, costs incurred by the chief constable as litigant in a licensing appeal. Decision of Court below (22, 100, iv.) affirmed, but on different grounds.—*Attorney-General v. Tynemouth Corporation*, L.R. [1898] 1 Q.B. 604; 78 L.T. 372.
- (viii.) **Q. B. D.**—*Private Street Works Act, 1892 (55 & 56 Vict., c. 57), ss. 4, 6, 7, 8*.—"Insufficient or Unreasonable".—The words "insufficient or unreasonable" in sect. 4 of the Act, mean insufficient to carry out the object proposed to be effected by the works, or unreasonable in the sense of the work not being required at all.—*Mansfield Corporation v. Butterworth*, 78 L.T. 527.
- (ix.) **Q. B. D.**—*Highways Repairable Ratione Tenure—Person Liable—Local Government Act, 1894 (56 & 57 Vict., c. 73), s. 25, sub-s. 2*.—The "person liable" under sect. 25, sub-s. 2 of the Act for expenses incurred by a

district council in putting into proper order a highway repairable *ratione tenuræ* is the occupier.—*Cuckfield Rural District Council v. Goring*, L.R. [1898] 1 Q.B. 865; 78 L.T. 530.

- (i.) **C. A.**—*Retrospective Rate—Delay—Mandamus—Public Health Act, 1875* (38 & 39 Vict., c. 55), s. 210, 229, 230.—An urban district council recovered in May, 1897, a claim against a rural district council for water supplied in 1895 to a contributory place, and the rural council applied for a mandamus to the urban council to issue a precept to the contributory place. *Held*, that the delay being shewn to be excusable the mandamus should issue and the rate would not be illegal, though retrospective. *Waddington v. County of London Union* (E. B. & E. 370), and *Worthington v. Hulton* ([1865] 1 Q.B. 63) discussed.—*Reg. v. Leigh Rural District Council*, L.R. [1898] 1 Q.B. 836; 78 L.T. 604.
- (ii.) **Q. B. D.**—*Transfer of Areas—Adjustment—Local Government Act, 1894* (56 & 57 Vict., c. 73), s. 68.—Where a county council ordered a township to be detached from one union and added to another, it was *held* on a consequent adjustment under sect. 68 of the Act of 1894, that the amount of a loan outstanding, the suitability of existing workhouse accommodation, and the effect of the withdrawal from a district with a large pauper population, of the contribution of a wealthier district should be taken into consideration.—*In re An Arbitration between the Rochdale Union and the Haslingden Union*, 78 L.T. 563.

### Lunacy:—

- (iii.) **C. A.**—*Creditor—Lunacy Act, 1890* (53 & 54 Vict., c. 5), ss. 116, 117, 120.—Property of a lunatic in the custody of the Court will not be available for creditors till the wants of the lunatic are provided for. But against property not actually in the custody under an order, the creditor can pursue his ordinary remedies.—*In re Clarke*, L.R. [1898] 1 Ch. 336; 78 L.T. 275.

### Malicious Damage:—

- (iv.) **C. C. R.**—*Asserting Public Right—Malicious Damage Act, 1861* (24 & 25 Vict., c. 97), s. 51.—Defendants who, in the belief that they were maintaining public rights, had destroyed an erection upon land over which such rights were claimed, were *held* to have been properly convicted under the Act after the jury had answered in the affirmative the questions whether the defendants went upon the land in the assertion of a right, and whether they did more damage than was necessary to vindicate the right.—*Reg. v. Clemens*, L.R. [1898] 1 Q.B. 556; 78 L.T. 204.

### Married Woman:—

- (v.) **C. D.**—*Conveyance without concurrence of Husband—Married Women's Property Act* (45 & 46 Vict., c. 75), s. 1 (i).—*Trustees Act, 1893* (56 & 57 Vict., c. 53), s. 16.—Where a married woman had, in 1895, lent her own money on a freehold mortgage, it was *held* that on a sale by a mortgagor she could convey to the purchaser without the concurrence of her husband, and by deed unacknowledged. *In re Harkness and Allsopp's Contract* (22, 84, ii.) distinguished.—*In re Brooke and Franklin's Contract*, L.R. [1898] 1 Ch. 647; 78 L.T. 416.
- (vi.) **C. A.**—*Restraint on Anticipation—Husband's Debts—Conveyancing Act, 1881* (44 & 45 Vict., c. 41), s. 39.—*Married Women's Property Act, 1893*, s. 2.—The application of the equitable doctrine that a husband stands as debtor to his wife who has paid debts of his by charging her property must be based upon the circumstances of the case, and this applies to orders under sect. 39 of the Conveyancing Act, 1881. Decision of Court below (23, 74, v.) affirmed, but on different grounds. The Court can order under sect. 2 of the Married Women's Property Act, 1893, to be paid, out of property subject to a restraint on anticipation,

costs of an appeal by a married woman against an order dismissing an action brought by her.—*Paget v. Paget*, L.R. [1898] 1 Ch. 470 78 L.T. 806.

- (i.) **C. A.**—*Protection Order*—Contract entered into prior to *Married Women's Property Act, 1882*—*Matrimonial Clauses Act, 1857*.—Decision of Court below (23, 74, iv.) affirmed. *In re Roper*; *Roper v. Ducaster* (59 C.D. 882; 59 L.T. 203) distinguished.—*In re Hughes*; *Brandon v. Hughes*, L.R. [1898] 1 Ch. 529; 78 L.T. 432.
- (ii.) **P. D.**—*Will of Married Woman*—*Letters of Administration Limited Grant to Husband*—*Probate Rules 15 and 18 of March, 1887*.—The Court, notwithstanding that a married woman domiciled in New Zealand and who died there in 1875, had left a will purporting to dispose of all her property, granted to her husband letters of administration to property, not limited to her separate use, and never reduced into possession, to which she was entitled at the time of her marriage under English settlements.—*In the goods of Eliza B. Donovan*, 78 L.T. 567.

#### Master and Servant:—

- (iii.) **Q. B. D.**—*Passenger Wrongly Charged by Tramway Conductor*.—A conductor of a tramway, with the approval of one of the company's inspectors, gave a passenger into custody on a charge, which proved to be unfounded, of passing a base coin. Held, in an action for damages for malicious prosecution that there was no evidence to shew that the conductor acted within the scope of his authority, or that the company ratified his proceeding.—*Knight v. North Metropolitan Tramways Co.*, 78 L.T. 227.

#### Merchandise Marks Act:—

- (iv.) **Q. B. D.**—*Merchandise Marks Act, 1887* (50 & 51 Vict., c. 28)—*Misdescription of Goods Sold*—*Liability of Principal*.—The appellant was convicted by magistrates of having sold by his shopman an American ham as a Scotch ham. Held, that whether he had taken all precautions to prevent misrepresentation by his shopmen was a question of fact for the magistrates, and that unless he had taken all such precautions he was not relieved from criminal liability under the Act for the acts of his servants in the course of their employment.—*Coppen v. Moore*, 78 L.T. 520.

#### Metropolis:—

- (v.) **Q. B. D.**—*London Building Act, 1894* (57 & 58 Vict., c. 213), s. 9—*New Street*—"Direct Communication."—By sect. 9 of the London Building Act the county council can refuse to sanction the laying out of a new street which does not form a direct communication between two streets. Whether a proposed new street does or does not comply with this condition is a matter of fact.—*Woodham v. London County Council*, L.R. [1898] 1 Q.B. 868; 78 L.T. 553.

#### Mortgage:—

- (vi.) **C. D.**—*Equitable Interest*—*Assignment*—*Priority*—*Notice*.—As between assignor and assignee an assignment of an equitable interest is perfect without notice to the trustee, but to secure priority of one assignee over another notice is necessary. After notice of a mesne incumbrance a first mortgagee cannot tack further advances, though made in pursuance of a covenant. A trust in a settlement for a mortgagor for life, or until he shall assign or charge the fund, is affected by an assignment prior to the settlement. *Hopkinson v. Rolt* (5 L.T. 90; L.R. 9 H. of L. 514) not applicable; *Manning v. Chambers* (1 De G. and Sm. 282); and *Seymour v. Lucas* (1 Dr. and Sm. 177) followed.—*West v. Williams*, L.R. [1898] 1 Ch. 488; 78 L.T. 147.

**Parliament :—**

- (i.) **C. A.**—*Parliamentary Election Petition Rules*, 1868, rr. 6 & 7.—In a claim in a Parliamentary election petition for a scrutiny and recount, the delivery of particulars is governed by Rule 7, and no order can be obtained under Rule 6. *Munro v. Balfour* (L.R. [1898] 1 Q.B. ; 67 L.T. 526) affirmed.—*Furness v. Beresford*, L.R. [1898] 1 Q.B. 495 ; 78 L.T. 137.

**Partnership :—**

- (ii.) **C. D.**—*Real Estate Charges Act*, 1854 (17 & 18 Vict., c. 113)—*Mortgage of Partner to Secure Partnership Debt*.—Where partnership assets are enough to meet the debts, Locke King's Act, 1854, does not apply to a charge on the separate estate of a partner to secure a debt of the firm.—*In re Ritson ; Ritson v. Ritson*, L.R. [1898] 1 Ch. 667.
- (iii.) **C. D.**—*Notice to Expel Partner—Motion to Stay—Arbitration Act*, 1889 (52 & 53 Vict., c. 49), s. 4.—On a motion to stay proceedings in an action by the plaintiff to restrain the defendants from acting on a notice to terminate a partnership, the Court held that a notice of dissolution sprung upon a partner under a clause in the deed, without previous complaint, was bad ; and refused an order on the motion.—*Barnes v. Youngs*, L.R. [1898] 1 Ch. 414.

**Patent :—**

- (iv.) **P. C.**—*Prolongation*.—Where a petitioner had incurred loss in introducing a valuable patent, a new patent for ten years was recommended.—*In re Currie and Timmis's Patent*, L.R. [1898] A.C. 347.
- (v.) **C. D.**—*Assignment—Notice—Licence—Patents, &c., Act*, 1883 (46 & 47 Vict., c. 57), ss. 23, 87.—A licence to work a patent taken with express notice that an agreement has been entered into to assign the patent, is taken subject to the agreement, although the licence may be registered earlier than the agreement.—*New Ixion Tyre and Cycle Co., Limited v. Spilsbury and Others*, 78 L.T. 543.

**Practice :—**

- (vi.) **C. D.**—*Costs—Public Authorities Protection Act*, 1893 (56 & 57 Vict., c. 61), s. 1.—A corporation were held to be entitled to costs as between solicitor and client where an action for an injunction to restrain them from using a building as a small-pox hospital had been dismissed.—*Harrop v. Corporation of Ossett*, 78 L.T. 387.
- (vii.) **H. L.**—*Decision of House of Lords*.—A decision of the House of Lords upon a point of law is conclusive till set aside by an Act of Parliament, and cannot meanwhile be re-argued in another case.—*London Tramways Co., Limited v. London County Council*, 78 L.T. 361.
- (viii.) **C. A.**—*Frivolous and Vexatious Action*.—A county court judge, on evidence that a judgment creditor had been induced by misrepresentations to execute a deed releasing the debtor for a payment less than the debt and covenanting not to proceed further, ordered the debt to be paid in full. The High Court stayed, as frivolous and an abuse of process, an action by the debtor for a declaration that he had been released and for an injunction.—*Stephenson v. Garnett*, L.R. [1898] 1 Q.B. 677 ; 78 L.T. 371.
- (ix.) **C. A.**—*Evidence—Copies of Privileged Documents*.—Documents once privileged are, as a general rule, always privileged ; but copies, however obtained, may be given as secondary evidence. *Lloyd v. Mostyn* (10 M. & W. 478) ; *Wheeler v. Le Marchant* (17 Ch. D. 675 ; 44 L.T. 632) distinguished.—*Calcraft v. Guest*, L.R. [1898] 1 Q.B. 759 ; 78 L.T. 283.

- (i.) **C. A.**—*Nonsuit—Discontinuance*—O. xxvi., r. 1.—A plaintiff has no right to a nonsuit at the trial; he can then only discontinue by leave of the Judge under O. xxvi., r. 1.—*Fox v. The Star Newspaper Company*, L.R. [1898] 1 Q.B. 686; 78 L.T. 811.
- (ii.) **C. A.**—*Mayor's Court—Costs—Mayor's Court of London Act, 1857 (20 & 21 Vict., c. 157), s. 11—Mayor's Court Rules, 1890 & 1892.*—In cases to which the scales of costs do not apply, taxation is unfettered.—*Hall v. Launspach*, L.R. [1898] 1 Q.B. 513; 78 L.T. 243.
- (iii.) **P. D.**—*Divorce.*—In an application that substituted service may be allowed, the petitioner should file an affidavit that he is unaware of the addresses of the parties to be served.—*Martin v. Martin and Velleman*, 78 L.T. 170.
- (iv.) **C. A.**—*Costs—O. xiv.—Leave to Defend—Remission to County Court—Costs of Application—County Court Act, 1888 (51 & 52 Vict., c. 43), ss. 65, 116; O. xiv., r. 9 (a).*—In an action on contract to recover between £20 and £50 plaintiff applied for judgment under O. xiv. The defendant obtained leave to defend and, according to the terms, made payment into Court. On the application of the plaintiff the case was remitted to the county court, and costs of the application were ordered to be costs in the cause. *Held*, that as the case was not within sect. 116 of the County Court Act or within O. xiv., r. 9 (a), there was no jurisdiction to make an order as to the costs.—*Dunn v. Appleton*, L.R. [1898] 1 Q.B. 564; 78 L.T. 246.
- (v.) **C. A.**—*Person Domiciled in Scotland—Agreement for Service on Agent in England—Os. ix. (rr. 1, 2); xi. (r. 1e).*—In a contract of sale it was agreed that service of proceedings upon a party residing in Scotland should be by delivery at the office of an association in London. *Held*, that this agreement was valid and that service of a writ so left would not be set aside. *Tharsis Sulphur v. Société Industrielle* (60 L.T. 924) approved. *British Wagon Co. v. Gray* (21, 45, iii.) distinguished.—*Montgomery, Jones & Co. v. Liebenthal & Co.*, L.R. [1898] 1 Q.B. 487; 78 L.T. 211.
- (vi.) **C. A.**—*Property in Dispute sent out of Jurisdiction for Inspection.*—The Court or a judge has power to order property which is the subject of an action to be sent out of the jurisdiction for inspection by witnesses who are to be examined by a commission.—*Chaplin v. Laing*, 78 L.T. 410.
- (vii.) **C. A.**—*Action Tried without a Jury—Appeal on Matter of Fact.*—The Court of Appeal may on a matter of fact turning upon the credibility of witnesses whom it has not seen, reverse the decision of a judge sitting without a jury.—*Coghlan v. Cumberland*, L.R. [1898] 1 Ch. 704; 78 L.T. 540.
- (viii.) **H. L.**—*House of Lords—Set off of Costs—O. lxx., r. 14.*—Costs due by an appellant in the House of Lords will not be set off against costs due to the appellant in the Court of Appeal.—*Russell v. Russell*, L.R. [1898] A.C. 307.
- (ix.) **C. A.**—*Appeal—Documents for Use of Court—Cost—O. lviii., r. 8.*—In an appeal, office copies of affidavits are *prima facie* sufficient. If further copies are wanted for the use of the Court, the order for their allowance should be at once obtained from the Court, or the cost of them will be disallowed on taxation.—*In re Rollason's Registered Design*, No. 2, 78 L.T. 511.
- (x.) **C. A.**—*Appeal—Case stated under Quarter Sessions Act, 1849 (12 & 13 Vict., c. 45), s. 11—Judicature Act, 1873 (36 & 37 Vict., c. 66), s. 19.*—The entry of judgment of the Divisional Court on a special case stated under the Quarter Sessions Act does not prevent an appeal against the judgment to the Court of Appeal. *Peterborough Corporation v.*

*Wilsthorpe Overseers* ([1883] 12 Q.B.D. 1); and *Holborn Guardians v. Chertsey Guardians* ([1885] 15 Q.B.D. 76) followed.—*Lodge v. Huddersfield Corporation*, L.R. [1898] 1 Q.B. 859; 78 L.T. 583.

- (i.) **C. A.**—*Counterclaim—Joinder*—O. xxi., r. 11.—A defendant in an action in contract joined as co-defendant to his counterclaim a person who, with him, had been joint vendor of the subject-matter of the contract to the plaintiff, but who had no interest in the particular action. *Held*, that such a joinder was not within O. xxi., r. 11, and that the counterclaim must be struck out.—*Pender and Others v. Taddet*, L.R. [1898] 1 Q.B. 798; 78 L.T. 581.

**Presumption of Death:—**

- (ii.) **P. D.**—*Seven Years' Absence*.—Where, for purposes of administration, it is sought to presume the death of a person who has long been missing, the Court does not regard as an inflexible requirement a period of seven years during which no information has been obtained of the person.—*In the goods of Richard Winstone*, L.R. [1898] P. 143; 78 L.T. 535.

**Public Health:—**

- (iii.) **C. A.**—*Railway Co.—Surface Drains*—"Sewer"—*Railway Clauses Act*, 1845 (8 & 9 Vict., c. 20), ss. 1, 68—*Public Health Act*, 1875 (38 & 39 Vict., c. 55), ss. 4, 13, sub-s. 2.—Decision of Court below (23, 50, iii.) affirmed.—*London and North-Western Railway Co. v. Runcorn District Council*, L.R. [1898] 1 Ch. 561; 78 L.T. 343.
- (iv.) **Q. B. D.**—*Public Health Acts*, 1875 and 1890—*Joint Private Drain—Joint Notice—Improvements*.—When repair is necessary to a private drain connecting with a sewer a row of houses belonging to several owners, the notices may be joint, and the authority need not, in its discretion, unclosethe whole of the drain for examination purposes; but on a notice to repair, an owner is not liable for improvements effected by the authority in the course of the work.—*Lancaster v. Barnes District Council*, L.R. [1898] 1 Q.B. 855; 78 L.T. 355.
- (v.) **Q. B. D.**—*Sewer—Cesspool*.—A bye-law forbade anyone to construct a "cesspool so that it shall have by drain or otherwise any outlet into a means of communication with any sewer." A person connected several cesspools by a pipe which carried the overflow into a larger cesspool on his land. Justices *held* that the pipe and the larger cesspool constituted a sewer, but the Court *held* that the magistrates were wrong.—*Button v. Tottenham Urban District Council*, 78 L.T. 470.
- (vi.) **Q. B. D.**—*Public Health (London) Act*, 1891 (54 & 55 Vict., c. 76), ss. 4, 11—*Sewers—Recovery of Outlay*.—The plaintiff complied with an order served upon him by the defendants under sect. 4 of the Act to repair a defective drain. It was found afterwards that the drain was a sewer, for the repair of which the defendants were responsible. *Held*, that the plaintiff could recover his outlay either under sect. 11 of the Act, or under the common law, as having been legally compelled to do work which the defendants were liable to do.—*Andrew v. St. Olaves Board of Works*, L.R. [1898] 1 Q.B. 775; 78 L.T. 504.
- (vii.) **Q. B. D.**—*Scarlet Fever in Upper Flut of Building—Milk Sold on Ground Floor—Diseases of Animals Act*, 1894 (57 & 58 Vict., c. 75).—A case of scarlet fever occurring in the upper story of a house on the ground floor of which milk is sold, brings the purveyor of milk within the county council's regulations 28 and 29, made in pursuance of the *Diseases of Animals Act*, 1894.—*London County Council v. Edwards*, 78 L.T. 558.

**Railway:—**

- (viii.) **C. D.**—*Lease—Quiet Enjoyment—Compensation—Lands Clauses Consolidation Act*, 1845 (8 & 9 Vict., c. 18).—A railway company acquired

by agreement the reversion of a lease containing a covenant for quiet enjoyment, and did work, without negligence, which injured the lessee's interest. *Held*, that the lessee's only remedy was to proceed for compensation under the Lands Clauses Act, 1845. *Kirby v. School Board of Harrogate* followed.—*Anderson v. Manchester, Sheffield and Lincolnshire Railway*, 78 L.T. 251.

- (i.) **C. D. & C. A.**—*Notice to Treat*—*Lands Clauses Consolidation Act*, 1845, s. 92.—Where a railway company proposed to build a bridge over a private road, a quarter of a mile from the mansion to which it led, it was *held*, that the road was not a portion of the house within sect. 92 of the Lands Clauses Act.—*Allhusen v. Ealing and South Harrow Railway*, 78 L.T. 285 and 396.
- (ii.) **Q. B. D.**—*Cheap Trains Act*, 1883 (46 & 47 Vict., c. 34), s. 6.—*Inspector of Weights and Measures* is not entitled to a railway ticket at a reduced rate under sect. 6 of the Cheap Trains Act.—*Spencer v. Lancashire and Yorkshire Railway*, L.R. [1898] 1 Q.B. 643; 78 L.T. 323.
- (iii.) **C. A.**—*Charges—Siding Rent—Arbitration—London and North-Western Railway Company's (Rates and Charges) Order Confirmation Act*, 1891 (54 & 55 Vict., c. 221), s. 5.—By the above Act the London and North-Western Railway are entitled to charge a reasonable sum for services rendered beyond their duty as carriers in connection with goods conveyed by them, and any difference arising under this power is to be settled by arbitration at the instance of either party. *Held*, that the subject to be referred to arbitration in such case is not merely the reasonableness of the charge, but every difference as to payment of charges, and that action cannot be brought until the difference has been referred.—*London and North-Western Railway v. Donellan*, 78 L.T. 575.

#### Rating:—

- (iv.) **Q. B. D.**—*Poor Rate—Building for Police Purposes—Chief Constable's House*.—The occupation by a chief constable and his family of part of premises, the remainder of which is exclusively used for police purposes, does not render the building liable to assessment to poor rate.—*Leicester County Council v. Assessment Committee of Parish of Leicester*, 78 L.T. 463.
- (v.) **C. A.**—*Poor Rate—Exemption*.—Decision of Court below (23, 80, viii.) affirmed.—*Royal College of Music v. Parishes of St. Margaret and St. John, Westminster*, L.R. [1898] 1 Q.B. 809; 78 L.T. 441.
- (vi.) **C. A.**—*Poor Rate—Station Appurtenances—Part of Railway directly earning Profits*.—Decision of the Divisional Court (23, 50, v.) affirmed.—*Assessment Committee of the Stockport Union v. London and North-Western Railway*, 78 L.T. 180.
- (vii.) **Q. B. D.**—*Drainage—Differential Rating*.—The principle upon which drainage rates should be calculated is that an equal rate should be levied on all property which is benefited by the drainage works; not a differential rate based on the advantages which particular properties derive from the works. *Metropolitan Board of Works v. Vauxhall Bridge Co.* (29 L.T. O.S. 211; 7 E. & B. 964) considered.—*Knight v. Langport District Drainage Board*, L.R. [1898] 1 Q.B. 588; 78 L.T. 260.
- (viii.) **C. A.**—*Market Garden—Glasshouses—Agricultural Rates Act*, 1896, ss. 1, 2, 5, 6, 9—*Agricultural Rates Order*, 1896, Arts. 1, 4.—Glasshouses in a market garden are to be rated as "buildings." Decision of the Divisional Court (23, 51, i.) reversed, *dissentiente Williams, L.J.*; *Purser v. Worthing Board of Health* (56 L.T. 447; 18 Q.B.D. 808); and *London and North-Western Railway Co.* (22, 76, v.) distinguished.—*Smith v. Richmond*, L.R. [1898] 1 Q.B. 688; 78 L.T. 174.

- (i.) **Q. B. D.—Coal Mines.**—In the rating of a colliery leased at per acre of coal gotten the assessment committee had entered the gross and the net at the same figure, and it was contended that in an appeal which had been referred to arbitration evidence could not be received that the way to arrive at net annual value was by making the proper deductions from the total receipts. *Held*, that the evidence was admissible, and that the gross was to be treated as an ascertained figure from which the colliery owners were entitled to such deductions as they could support.—*The Denaby and Cadeby Colliery Co. v. The Assessment Committee of Doncaster Union*, 78 L.T. 388.
- (ii.) **Q. B. D.—Reservoir—Public Health Act, 1875** (38 & 39 Vict., c. 55), s. 211, sub-s. 1 (b).—A water company's cement-lined reservoir covering many acres of ground was *held* to be "land covered with water" and therefore rateable at one-fourth of its net annual value. *East London Waterworks Co. v. Leyton Sewer Authority* (6 Q.B. 699) commented on.—*Southwark and Vauxhall Water Co. v. Hampton Urban District Council*, 78 L.T. 420.
- (iii.) **Q. B. D.—Limit Fixed by Local Act Exceeded by Inclusion of Other Charges.**—By the Crediton Improvement Act, 1836, a district of the parish was freed from liability for highway repairs outside its boundary and the powers of Commissioners appointed under the Act to levy rates was restricted to 2s. 1d. in the £. The district became under the Public Health Act, 1872, an urban district, and the Commissioners the sanitary authorities. By a confirmation order the urban district was extended so as to take in the whole of the parish. Under those circumstances a rate was levied of 3s. 6d. under the title of the "Crediton Improvement Rate," but in reality to cover in addition other charges, including a highway rate on the added district. Quarter Sessions amended the rate by expressing that it was made also under the Public Health Acts; but it was *held* that the rate was bad as the Improvement Act had been unaffected by subsequent legislation.—*Hill v. Crediton Urban District Council*, 78 L.T. 351.
- (iv.) **Q. B. D.—Highway Rate—Exemption From—Highway Acts, 1835** (5 & 6 Wm. IV., c. 50), s. 33; 1852 (25 & 26 Vict., c. 61), s. 35.—Where a corporation liable to the repair of a highway *ratione tenuræ* had paid a fixed sum in full discharge of all claims thereafter for repair, on an order under sect. 35 of the Highway Act, 1862, it was *held* that the corporation was not exempted from the usual rates for the repair of highways in the parish generally.—*North-Eastern Railway v. Overseers of Dalton Parish*, 78 L.T. 524.

#### Remoteness:—

- (v.) **C. D.—Power—Appointment.**—In 1843 a husband and wife under powers of their marriage settlement, dated 1793, gave to each of their daughters who should marry, £1,500; to such of the daughters as remained single the income of the residue for life equally; and on the death of the last surviving single daughter (or on her marriage as the event might be) the residue itself to all the surviving children, male or female, equally. The appointors died in 1846 and the last surviving unmarried daughter in 1897. *Held*, that all the gifts were void for remoteness, except the gift of an equal share of the income to the daughters who remained unmarried.—*In re Gage; Hill v. Gage*, L.R. [1898] 1 Ch. 498; 78 L.T. 347.
- (vi.) **C. D.—Will—Charitable Gift.**—Money was left on trust for erecting almshouses and an orphanage so "soon as any land shall at any time be given or obtained for the purpose." *Held*, void for remoteness and not charitable bequests.—*In re Gyde; Ward v. Little*, 78 L.T. 449.



**Res judicata:—**

- (i.) **Q. B. D.**—*Wall Beyond Building Line—Information—Dismissal—Public Health (Buildings in Streets) Act, 1888.*—An information laid against the appellant, under sect. 3 of the Act, for projecting a wall of a house beyond the building line, was dismissed on the ground that justices were equally divided in opinion. But justices convicted on a second information which differed from the first only in alleging that the offence had continued for a longer period. *Held*, that the dismissal of the first summons was final, as it in effect decided that the erection was no offence against the Act.—*Kinnis v. Graves*, 78 L.T. 502.

**Revenue:—**

- (ii.) **C. D.**—*Settlement Estate Duty—Finance Acts, 1894 (57 & 58 Vict., c. 30), ss. 5, 22; 1896 (59 & 60 Vict., c. 28), ss. 19, 24, 39.*—Settlement duty payable under the will of a person who died between the dates fixed for the commencement of the Finance Acts of 1894 and of 1896 respectively was *held* to be payable out of general residue. *In re Webber; Gribble v. Webber* (21, 71, i.) applied.—*In re Gibbs; Thorne v. Gibbs*, L.R. [1898] 1 Ch. 625; 78 L.T. 289.
- (iii.) **C. A.**—*Estate Duty—Finance Act, 1894, s. 21, sub-s. 5.*—Sub-sect. 5 of sect. 21 does not apply to cases where both the income of property settled by the survivor and the property itself reverts. Decision of Court below (23, 51, viii.) reversed.—*Attorney-General v. Strange*, 78 L.T. 516.

**River Pollution:—**

- (iv.) **Q. B. D.**—*Thames Conservancy Act, 1894 (57 & 58 Vict., c. 187), s. 92.*—A person is not guilty of wilfully causing, contrary to sect. 92 of the Thames Conservancy Act, a substance produced in making or supplying gas to flow into the Thames or a tributary, who merely omits to do something that might have lessened the evil. *Smith v. Barnham* (1 Ex. Div. 419; 34 L.T. 774) considered.—*High Wycombe Corporation v. Thames Conservators*, 78 L.T. 463.

**Settled Land:—**

- (v.) **C. D.**—*Payment by Tenant for Life—Improvements—Settled Land Acts, 1882 (45 & 46 Vict., c. 38), s. 25 (vi.) (xx.); 1887 (50 & 51 Vict., c. 30), s. 1.*—The repayment, by the trustees of settled estates, of money expended by the life tenant in effecting a transfer of improvement charges does not come within sect. 1 of the Act of 1887. The replacing of thatch by iron roofing is an improvement within sect. 25 (xx.) of the Act of 1882.—*In re Verney's Settled Estates*, L.R. [1898] 1 Ch. 508; 78 L.T. 191.
- (vi.) **C. D.**—*Mortgage—Settled Land Acts, 1882 (s. 2, sub-s. 1); 1890, s. 11.*—A tenant for life of estate A, which was unincumbered, settled estate B, which was subject to a mortgage, on trusts which became identical with those affecting estate A. *Held*, that he was entitled to raise money on the security of both estates to pay off the mortgage on B estate.—*In re Lord Monson's Settled Estates*, L.R. [1898] 1 Ch. 427; 78 L.T. 225.
- (vii.) **C. D.**—*Compound Settlement—Charges—Settled Land Act, 1882, ss. 2, 10—Vendor and Purchaser Act, 1874.*—In a re-settlement deed a life estate given to the father was not expressed to be in continuation of any estate in him. *Held*, that it was a new settlement, not a compound settlement; and that the life tenant could not sell free from jointures and portions charged in previous settlements.—*In re Mundy and Roper*, 78 L.T. 547.

- (i.) **C. D.—Compound Settlement—Settled Land Acts, 1882, ss. 2, 20, 38; 1890 (53 & 54 Vict., c. 69), s. 4.**—The surviving life tenant of property left in strict settlement on which a jointure created by a prior life tenant was existing, desired to sell. *Held*, that he could give a good title, and the trustees appointed for the purposes of the Settled Land Act could give a good discharge for purchase money, and that it was not necessary to appoint trustees of the compound settlement. *In re Tibbit's Trusts* (23, 14 ii.) distinguished.—*In re Keck and Hart's Contract*, L.R. [1898] 1 Ch. 617; 78 L.T. 287.

**Ship:—**

- (ii.) **Adm.—Collision—Tyne Pilotage Act (28 Vict., c. 44), ss. 10, 11, 16, 22—Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 604.**—A steamer, neither the master nor mate of which held a pilotage certificate, while carrying passengers up the Tyne in charge of a licensed pilot came into collision, through his fault, with another vessel. *Held*, that notwithstanding that the Tyne Pilotage Act renders pilotage optional, sect. 204 of the Merchant Shipping Act, which makes pilotage compulsory under such circumstances applied, and that therefore the owner of the steamer was not liable for the loss caused by the collision. *The Johan Sverdrup* (12 P.D. 43; 56 L.T. 256) distinguished.—*The Warsaw*, L.R. [1898] P. 127; 78 L.T. 327.
- (iii.) **Adm.—Sale—Liens—Purchase Money.**—A firm agreed to purchase a ship, and on paying a deposit received eight shares in the vessel, which they mortgaged. The firm subsequently suspended payment, and the vendors retook the vessel and cleared off an old lien upon her (*see* 23, 20, ix.), paid a sum to cancel an adverse charter, repaired the vessel, and then sold her to a foreign firm. In a claim made by the mortgagees of the eight shares, a decree by consent was made that they were to have a certain ratio of the purchase money, less such deductions as might be established. *Held*, that the discharge of the liens, the costs of cancelling the charter and of repairing the vessel were not proper deductions from the purchase money before division, but that the brokerage on the sale was. *The Orchis* (15 P.D. 38; 62 L.T. 407) distinguished.—*The Ripon City*, otherwise *The Silvius*, L.R. [1898] P. 78; 78 L.T. 296.
- (iv.) **C. A.—Salvage.**—Where property worth upwards of £76,000 was at great risk and with skill saved by two steamers, maintained with steam up constantly especially for salvage purposes, the Court upheld as reasonable an award of £19,000 to the salvors.—*The Glengyle*, L.R. [1898] P. 97; 78 L.T. 139.
- (v.) **Adm.—Incomplete Performance of Towage Contract.**—A vessel which a tug owner had contracted to tow into dock went ashore without any fault on part of tug or of tow. *Held*, that the tug owner had no claim. Subsequently the tug, on request, rendered assistance which saved the cargo and earned freight. *Held*, that this was salvage service, for which tug owner was entitled to remuneration.—*The Madras*, L.R. [1898] P. 90; 78 L.T. 325.
- (vi.) **Com. Court.—Bill of Lading—Insurance—Exceptions.**—A bill of lading contained among the exceptions "loss or damage arising from accidents or defects latent on beginning of voyage or otherwise." *Held*, that there was an implied condition that the ship was fit to carry the cargo; and that damage caused to the cargo by the ship being insulated for refrigerating purposes was not within the exceptions.—*Waikato (Owners of the Wool Cargo on board) v. New Zealand Shipping Co.*, L.R. [1898] 1 Q.B. 645; 78 L.T. 197.
- (vii.) **Com. Court.—Insurance—Liability of Ship's Underwriters for Damaged Cargo.**—While a ship was insured against perils "of the seas, and of all other perils, losses, and misfortunes, that shall

come to the hurt, detriment, or damage of the said ship or any part thereof," her cargo was rendered worthless and offensive from the consequences of a collision, and the owner of the cargo abandoned it to his underwriters, who declined to take delivery or pay freight. An attempt to recover from the insurers of the ship the expense of clearing away the refuse cargo failed, as the claim was held not to fall within the policy.—*The Field Steamship Co. v. Burr*, L.R. [1898] 1 Q.B. 821; 78 L.T. 293.

- (i.) **C. A.**—*Insurance—Negligence—Notice of Abandonment.*—Decision of Court below (23, 20, vii.) affirmed. Notice of abandonment need not be given to underwriter on freight.—*Trinder, Anderson & Co. v. North Queensland Insurance Co.*, 78 L.T. 485; *Same v. Thames and Mersey Co.*; *Same v. Weston, Crocker & Co.*
- (ii.) **H. L.**—*Insurance—Collision Clause.*—Appended to a collision clause was a proviso "that this clause shall in no case extend to any sum which the assured may become liable to pay or shall pay for removal of obstructions under statutory powers consequent on such collision." Held, that underwriters were freed from liability to indemnify insurers for expenses incurred in removing wreckage following a collision. *The North Britain* ([1894] P. 77; 70 L.T. 210) followed.—*Tatham, Bromage & Co. v. Burr*; *The Engineer*, 78 L.T. 473.
- (iii.) **Com. Court.**—*Insurance—Lloyd's Slip—Stamp Act, 1891* (54 & 55 Vict., c. 89), ss. 91, 93.—The "slip" or "covering note" issued at Lloyd's for contracts of re-insurance cannot be stamped so as to form a policy under sects. 91 and 93 of the Stamp Act, and is no more than a contract of insurance binding in honour.—*Home Marine Insurance Co. v. Smith*, L.R. [1898] 1 Q.B. 829; 78 L.T. 465.
- (iv.) **C. A.**—*Insurance—Repairs—Survey for Re-classification—Costs.*—Decision of Court below (23, 44, i.) affirmed. *The Marine Insurance Co. v. The China Trans-Pacific Steamship Co.* (11 App. Cas. 573; 55 L.T. 491) followed.—*Ruabon Steamship Co., Limited, v. The London Assurance*, L.R. [1898] 1 Q.B. 722; 78 L.T. 402.
- (v.) **Adm.**—*Charter-Party—Construction.*—A charter-party gave to the consignee the option of taking a cargo of coal either at a price per ton delivered, or on the bill of lading quantity less 2 per cent. before bulk was broken. He elected to take the cargo on the latter terms, but he claimed that an agreed allowance for effecting discharge should be made on the bill of lading quantity without deducting 2 per cent. Held, that the clauses must be read together, and that he would be allowed for discharge on the net quantity only for which he paid.—*The Hollinside*, L.R. [1898] P. 131.
- (vi.) **Q. B.**—*Re-insurance.*—The defendant, an underwriter, re-insured with the plaintiffs a ship on which he had issued two policies of insurance. During the currency of the re-insurance one of these policies expired, the other was cancelled. A new one was issued by the defendant varying slightly from the former ones, and the ship became a total loss. The plaintiffs paid the defendant, but now sought to recover this payment on the ground that at the time of the loss no policy was in existence which was in existence when they took the risk of re-insurance. Held, that as the defendant had an insurable risk both at the time the plaintiffs undertook the re-insurance and at the time of the loss, the plaintiffs could not recover.—*The Lower Rhine, &c., Insurance Association v. Sedgwick*, L.R. [1898] 1 Q.B. 739; 78 L.T. 496.

#### Solicitor:—

- (vii.) **C. A.**—*Lien—Obligation to Third Parties.*—A solicitor who has a lien on documents is nevertheless bound to produce the documents to a third party if his client would have been under such an obligation.—*In re Hawkes*; *Ackerman v. Lockhart*, 78 L.T. 886.

**Statute of Limitations:—**

- (i.) **C. D.**—(3 & 4 Will. IV., c. 27), s. 2—*Acknowledgment of Barred Debt by one Executor and Devisee in Trust.*—A testator, who had deposited title deeds with the plaintiff to secure repayment of money, appointed defendants as executors and devisees in trust. One of the defendants, without consulting the other, acknowledged the debt and more than six years' arrears of interest. The other defendant in answer to a foreclosure action pleaded the Statute. *Held*, that the acknowledgment as an act of a trustee was not valid to bind the real estate, and as the act of an executor was not valid against a devisee; and therefore that arrears of interest could not be recovered for a longer period than six years. *Bolding v. Lane* (1 De G. J. & S. 122) followed.—*Astbury v. Astbury*, 78 L.T. 494.

**Tender:—**

- (ii.) **C. A.**—“*Highest Net Money Tender.*”—Decision of Court below (23, 78, i.) affirmed.—*South Hetton Coal Co., Limited, v. Hawell, & Co., Coal Co., Limited*, L.R. [1898] 1 Ch. 465; 78 L.T. 366.

**Trade Mark:—**

- (iii.) **C. A.**—*Word not Registrable. Invented Word of Similar Sound.*—Decision of Court below (23, 54, iii.) affirmed.—*In re Ripley and Son's Trade Mark*, 78 L.T. 367.
- (iv.) **C. D.**—*Non-User—Rectification of Register—Patents, &c., Acts, 1883* (46 & 47 Vict., c. 47), s. 73; 1888 (51 & 52 Vict., c. 50), s. 14.—In 1882 a firm registered the figure of a butterfly as a trade mark and applied it to class 42, but made no use of it. In 1897 an application from another firm to have the same figure registered for use in class 42 was refused by the Comptroller. *Held* (following *Edwards v. Dennis*, 30 Ch. Div. 454; 54 L.T. 112), that as there was no evidence of user, or of intention to use, on the part of the firm who had registered, the mark must be expunged and the costs of motion be borne by them; and that the Comptroller proceed with the application of 1897.—*In re John Butt and Co.'s Trade Mark*, 78 L.T. 552.

**Trade Name:—**

- (v.) **C. A.**—*Similarity—Injunction—Companies Act, 1862, s. 20.*—A brewery in Manchester called the “Manchester Brewery Co.” and one in Macclesfield called the “North Cheshire Brewery Co.” traded in the same district. A new company was formed to take over the latter under the name of the “North Cheshire and Manchester Brewery Co.” *Held*, that Manchester Brewery Co. was entitled to an injunction restraining the new company from using the proposed name. Decision of Court below reversed.—*Manchester Brewery Co., Limited, v. North Cheshire and Manchester Brewery Co., Limited*, L.R. [1898] 1 Ch. 539; 78 L.T. 537.
- (vi.) **C. D.**—*Concurrent Uses by Two Firms—Discontinuance by One.*—Where a trade name used by two manufacturers is dropped by one, but continued by the other, the former cannot after some years' disuse revive it if it has meantime become solely associated with the other's goods.—*Daniel and Arter v. Whitehouse*, L.R. [1898] 1 Ch. 685.

**Trustee:—**

- (vii.) **C. D.**—*Appropriation of Security to meet Trust Legacy.*—Where trustees have *bonâ fide* appropriated a security to meet a trust legacy in favour of one of several residuary legatees, the appropriation is good.—*In re Nickels; Nickels v. Nickels*, L.R. [1898] 1 Ch. 630; 78 L.T. 379.
- (viii.) **C. A.**—*Breach of Trust—Mortgage of Trust Estate with Trustee's own.*—The defendant, who had borrowed money on his English estates, executed as further security a charge on estates in Ceylon, of which the Court of Appeal had declared that he was a trustee with a lien for

purchase money. *Held*, that he must be treated as having raised the sum rateably out of the two estates according to their respective values, and must be debited with the share attributable to the Ceylon estate.—*Rochevoucauld v. Boustead*, L.R. [1898] 1 Ch. 550.

- (i.) **H. L.—Investments—Trusts (Scotland) Amendment Act, 1894** (47 & 48 Vict., c. 68), ss. 8, 10, 12—*Judicial Factors Act, 1849* (12 & 13 Vict., c. 51), ss. 4, 13.—The curator bonis is not exempted from responsibility for an improper investment, on the ground that the accountant of Court (Scotland) has approved of it.—*Hutton v. Annan*, L.R. [1898] A.C. 289.

### **Vendor and Purchaser:—**

- (ii.) **C. A.—Conditions of Sale.**—One of the conditions of the sale of a house by auction was that the vendor should have power to annul the sale if any objection was made "as to the title, particulars, conditions, or any other matter or thing relating or incidental to the sale which the vendor is unable or unwilling to comply with." *Held*, that the vendor was entitled to rescind on conditions to which he objected in the conveyance being insisted on. *Bowman v. Hyland* (8 O.D. 588; 83 L.T. 90) distinguished. Decision of Court below reversed.—*In re Deighton and Harris's Contract*, L.R. [1898] 1 Ch. 458; 78 L.T. 430.
- (iii.) **C. D.—Agent or Principal?—Misrepresentation?**—An offer to purchase a Congregational Chapel made by solicitors "on behalf of our client, the manager of the E. Mineral Water Co.," was accepted. The purchaser was buying to re-sell by arrangement at a profit to a committee of Roman Catholics whose agent's tender had been refused by the chapel trustees from an objection to sell the building for Roman Catholic uses. *Held*, on the evidence, that the purchaser bought not as agent, but for his own profit; and that any misrepresentation as to the Mineral Water Company was under the circumstances immaterial.—*Nash v. Dix*, 78 L.T. 445.
- (iv.) **C. D.—Sale under "Same Terms as to Title, &c.," as in an Earlier Contract—Time for Completion—Interest.**—A person who was under contract to buy land with an obligation to pay interest from a given date if the purchase was then incomplete, contracted to sell the land subject to "the same terms as to the title, &c.," as those in the contract in which he was in the position of purchaser. *Held*, that the clause as to commencement of interest in the original contract could not be read into the second contract, but that the date from which interest should run would be that on which the second purchaser could prudently have taken possession—which was fixed at nine days after the abstract was delivered.—*In re Keeble and Stillwell's Fletton Brick Co.*, 78 L.T. 383.
- (v.) **C. D.—Specific Performance—Delay—Deposit.**—A person agreed to purchase a reversion subject to life interests, and paid a deposit. No effective steps to complete were taken till the termination of the last life interest, nearly ten years later. *Held*, that the purchaser had lost his right to specific performance (*Eads v. Williams*, 4 De G. M. & G. 674); but that he was entitled to the return of the deposit (*Howe v. Smith*, 50 L.T. 578).—*Levy v. Stogdon*, L.R. [1898] 1 Ch. 478; 78 L.T. 185.
- (vi.) **C. D.—Title Deeds not in Possession of Vendor.**—A purchaser of freehold, agreed to accept the best title the vendor could give. Some of the title deeds were in the hands of a former mortgagee who had been paid off, but who declined to part with the deeds. *Held*, that the vendor was bound to fulfil his obligation of handing over on completion all title deeds in his possession or power; that sect. 3, sub-sect. 6 of Conveyancing Act, 1881, had no application; and that no question of title within the terms of the agreement was involved.—*In re Duthy and Jesson's Contract*, L.R. [1898] 1 Ch. 419; 78 L.T. 223.

- (i.) **C. D.**—*House for Private Residence only*.—Where a purchaser covenanted not to use a house otherwise than as a private residence, it was held to be a breach to employ the house as a residence for governesses and school girls attending a distant school.—*Ilbison v. Tulloch*, L.R. [1898] 1 Ch. 424; 78 L.T. 224.
- (ii.) **C. D.**—*Defect in Title*—"Default."—An agreement for the sale of leaseholds provided that "if from any cause whatever other than the default of the vendor the purchase should not be completed" by date the purchaser should pay interest. Delay was caused by defect in the vendor's title unknown to the vendor and not so obvious as to make his ignorance unreasonable. Held, that he was entitled to interest.—*In re Woods and Lewis's Contract*, L.R. [1898] 1 Ch. 433; 78 L.T. 250.
- (iii.) **C. D.**—*Soil of Highway—Presumption of Ownership—Charitable Trusts Recovery Act, 1891* (54 & 55 Vict., c. 17), s. 3.—The Corporation of London threw into a new roadway property which was subject to a rent charge under an ancient will, and subsequently sold subject to rent charge, if any, premises occupying part of the site of the demolished property. Held, on the rule in *Micklethwaite v. The Newlay Bridge Co.* (38 C.D. 133; 55 L.T. 336) as to the presumption of the highway passing *ad medium flum*, that the purchaser was liable, as the rule applied to streets in towns as well as to the country.—*In re White's Charities; Charity Commissioners v. Corporation of London*, L.R. [1898] 1 Ch. 659; 78 L.T. 550.

**Volunteer:—**

- (iv.) **C. A.**—*Army Act, 1881* (44 & 45 Vict., c. 58), ss. 41, 43, 45, 158, 170—*Volunteer Act, 1868* (26 & 27 Vict., c. 65), s. 21.—On the facts stated in 23, 88, ii., the Court of Appeal held, reversing the judgment of the Court below, that the members of the corps were subject to military law till they were dismissed on their return home, and that the act of the defendant was justified under the Army Act, 1881.—*Marks v. Frogley*, L.R. [1898] 1 Q.B. 888; 78 L.T. 607.

**Will:—**

- (v.) **C. A.**—*Charitable Bequest—9 Geo. II., c. 36*.—A gift to trustees under the will of a testator who died before the Mortmain and Charitable Uses Act, 1888 came into force, of property, real, mixed and personal, to dispose of in charity in their discretion, does not call for the interference of the Court unless the trustees make a selection which is invalid according to the law at the date of the testator's death. See 21, 70, iv.—*In re Percy; Whitwham v. Percy*, L.R. [1898] 1 Ch. 565; 78 L.T. 277.
- (vi.) **C. D.**—*Contingent Equitable Limitation follows the Law*.—Real estate was left in trust for A for life and then in trust for such of his children as attained 21, or being daughters married earlier. Held, that on A's death the eldest child who fulfilled the conditions became entitled to the whole income, the class opening to admit the other children as they became respectively qualified, in the same manner as if the limitations had been legal.—*In re Averil; Salisbury v. Buckle*, L.R. [1898] 1 Ch. 523; 78 L.T. 320.
- (vii.) **C. D.**—*Construction*.—A testator bequeathed a legacy to trustees on trust to pay the income to B for life, and if he should have two children who attained the age of 21, then a moiety of the legacy to his executors or administrators. Held, that B having had two children he was, on their attaining 21 years, absolutely entitled to this moiety.—*In re Bogle; Bogle v. Yorstoun*, 78 L.T. 457.
- (viii.) **Q. B.**—*Construction—Rule in Shelley's Case*.—A testator devised lands in trust for the sole use and benefit of his daughter for life and after-

wards to the use of the heirs of her body "such freehold lands. . . to be legally conveyed and assured unto such heirs of my child or children in equal shares as they shall severally and respectively attain the age of 21 years or be married and to their several and respective heirs and assigns for ever." The daughter left one son, who died intestate without heirs of body. *Held*, that the fee simple expectant on the estate tail to the daughter passed to her son under the will, and that he took as purchaser as the rule in *Shelley's case* did not apply. See 23, 55, iv.—*Foxwell v. Van Grutten*, 78 L.T. 231.

- (i.) **C. D.**—*Construction*.—A gift of property in thirds to the children of A, the children of B, and the children of C, upon the death of A and B and C, will be construed as "upon the death of the survivor of A, B, and C," if any other construction would cut down a clear gift, in an earlier part of the will, of income to tenants in common for life; *in re Hutchinson's Trusts* (21 C.D. 811; 47 L.T. 573) distinguished. On the death of a life tenant the accumulations of income would follow the destination of the corpus, subject to the provisions of the *Thelluson Acts*. By the terms of the will if A, or B, or C, had no issue the lapsed share of the corpus was to be divided between the "issue of the survivor or survivors."—*In re Robbins; Gill v. Worrall*, 78 L.T. 218.
- (ii.) **C. D.**—*Construction*—*Bequest to Buy Annuity*—*Interest*.—A bequest to executors of a sum of money to be laid out in the purchase of an annuity is in the nature of a trust legacy and does not commence to bear interest until twelve months after testator's death.—*In re Friend; Friend v. Young*, 78 L.T. 222.
- (iii.) **P. D.**—*Alteration*—*Appointment of Executors by Marginal Note*.—Certain persons whose appointment as executors had been cancelled were referred to as executors in a marginal note to the will, and they were left as trustees. *Held*, that the effect of the note was to appoint as executors expressly.—*In the goods of Ellen Nussey*, 78 L.T. 169.
- (iv.) **C. D.**—*Construction*—*Apportionment Act*, 1870 (33 & 34 Vict., c. 35), ss. 2, 5, 7.—A testator in 1895 left to his wife for life the "whole of the income derived" from certain shares in a company, and gave the residue of his estate to others. *Held*, that the bequest of the income came within sect. 7 of the Act, and was therefore not subject to apportionment.—*In re Meredith; Stone v. Meredith*, 78 L.T. 492.
- (v.) **C. D.**—*Power of Appointment*—*Unattested Foreign Will*—*Wills Act*, 1837 (1 Vict., c. 26), ss. 9, 10, 27—*Lord Kingsdown's Act*, 1861 (24 & 25 Vict., c. 114), s. 1.—A woman who was resident in France had under the will of her father, a British subject, a power of appointment by will over a portion of his residuary estate. She left a paper writing, signed but unattested, "To my Executors. I leave A B in case of my death £600." This was a valid will according to French law, but was held not to operate as an execution of the power.—*Hummel v. Hummel*, L.R. [1898] 1 Ch. 642; 78 L.T. 518.

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## INDEX

ABDUL HAMID BEY, *in the goods of*  
(78 L.T. 302), 95, v.

Ackerman v. Lockhart; *in re Hawkes*  
(78 L.T. 336), 118, vii.

Allhusen v. Ealing and South Harrow  
Railway (78 L.T. 285 & 396), 114, i.

Anderson v. Manchester, Sheffield,  
and Lincolnshire Railway (78 L.T.  
251), 113, viii.

Andrew v. St. Olave's Board of Works  
(L.R. [1898] 1 Q.B. 775; 78 L.T.  
504), 113, vi.

- Anglo-Continental Corporation of Western Australia, Limited, *in re* (78 L.T. 157), 23, 66, iv.
- Ardern, *in the goods of* (L.R. [1898] P. 147; 78 L.T. 536), 95, ii.
- Ashworth v. Wells (78 L.T. 136), 103, ii.
- Astbury v. Astbury (78 L.T. 494), 119, i.
- Attorney-General for New South Wales v. Walters and Others (78 L.T. 272), 99, v.
- Attorney-General v. Mayor, &c., of Swansea (L.R. [1898] 1 Ch. 602; 78 L.T. 412), 108, vi.
- Attorney-General v. Strange (78 L.T. 516), 116, iii.
- Attorney-General v. Tynemouth Corporation (L.R. [1898] 1 Q.B. 604; 78 L.T. 372), 108, vii.
- Auriferous Properties, Limited, *in re* (L.R. [1898] 1 Ch. 691), 101, vii.
- Averill, *in re*; Salisbury v. Buckle (L.R. [1898] 1 Ch. 523; 78 L.T. 320), 121, vi.
- BARNES v. YOUNGS (L.R. [1898] 1 Ch. 414), 111, iii.
- Barnett, *in the goods of* (L.R. [1898] P. 145; 78 L.T. 391), 95, iii.
- Bartlett v. Mayfair Property Co., Limited (78 L.T. 302), 101, iii.
- Bateman v. Bateman (otherwise Harrison) (78 L.T. 472), 105, iv.
- Batt, John, & Co.'s Trade Marks, *in re* (78 L.T. 552), 119, iv.
- Beckwith, *c. p.*; *in re* New British Iron Co., Limited (78 L.T. 155), 23, 67, v.
- Birmingham Breweries, Limited, v. Jameson (78 L.T. 512), 98, vii.
- Blenkinsop v. Ogden (L.R. [1898] 1 Q.B. 783; 78 L.T. 554), 103, vi.
- Bogle v. Yorstoun; *in re* Bogle (78 L.T. 457), 121, vii.
- Boord v. African Consolidated Land Co. (L.R. [1898] 1 Ch. 596), 23, 67, iii.
- Brandon v. Hughes; *in re* Hughes (L.R. [1898] 1 Ch. 529; 78 L.T. 432), 110, i.
- Brook and Framlin's Contract, *in re* (L.R. [1898] 1 Ch. 647; 78 L.T. 416), 109, v.
- Browncombe v. Johnson (78 L.T. 265), 102, vi.
- Bryant v. Hancock & Co. (L.R. [1898] 1 Q.B. 716; 78 L.T. 397), 107, i.
- Buckwell v. Norman (L.R. [1898] 1 Q.B. 622; 78 L.T. 248), 97, v.
- Button v. Tottenham Urban District Council (78 L.T. 470), 413, v.
- CALCOTT AND ELVIN'S CONTRACT, *in re* (78 L.T. 417), 97, vi.
- Calcraft v. Guest (L.R. [1898] 1 Q.B. 759; 78 L.T. 283), 111, ix.
- Caledonian Railway v. Turcarf (L.R. [1898] A.C. 256), 107, iii.
- Cardiff, Vicar, &c., of St. John's v. Parishioners of same (L.R. [1898] P. 155), 103, iii.
- Chaplin v. Laing (78 L.T. 410), 112, vi.
- Charity Commissioners v. London Corporation, *in re* White's Charities (L.R. [1898] 1 Ch. 659; 78 L.T. 550), 121, iii.
- Clarke, *in re* (L.R. [1898] 1 Ch. 336; 78 L.T. 275), 109, iii.
- Clifford v. The Thames Ironworks Co. (78 L.T. 164), 23, 69, ii.
- Clyde Cycle Co. v. Hargreaves (78 L.T. 296), 105, x.
- Coghlan v. Cumberland (L.R. [1898] 1 Ch. 704; 78 L.T. 540), 112, vii.
- Colchester Grammar School, &c. (78 L.T. 509), 103, v.
- Coppen v. Moore (78 L.T. 520), 110, iv.
- Crawley v. White (78 L.T. 167), 104, iii.
- Cronmire, *in re*; *c. p.* Waud (78 L.T. 170, 483), 104, i.
- Cuckfield Rural Council v. Goring (L.R. [1898] 1 Q.B. 865; 78 L.T. 530), 108, i.
- Currie and Timmis's Patent, *in re* (L.R. [1898] A.C. 347), 111, iv.
- DALLIMORE v. TUTTON (78 L.T. 469), 108, i.
- Daniel and Arter v. Whitehouse (L.R. [1898] 1 Ch. 685), 119, vi.
- Day v. Day and Erskine (78 L.T. 358), 105, i.
- Deighton and Harris's Contract, *in re* (L.R. [1898] 1 Ch. 458; 78 L.T. 430), 120, ii.
- Denaby and Cadeby Colliery Co. v. Doncaster Union Assessment Committee (78 L.T. 388), 115, i.
- De Nicols v. Curlier; *in re* De Nicols (L.R. [1898] 1 Ch. 403; 78 L.T. 152, 541), 106, i.
- D'Esterre v. Waverley Type Writer (L.R. [1898] 1 Ch. 699; 78 L.T. 593), 102, i.
- Donovan, *in the goods of* (78 L.T. 567), 110, ii.



- Dorking Union v. St. Saviour's Union** (L.R. [1898] 1 Q.B. 594), 23, 77, ii.
- Driffeld Gas Light Co., in re** (L.R. [1898] 1 Ch. 451; 78 L.T. 162), 101, ii.
- Dunn v. Appleton** (L.R. [1898] 1 Q.B. 564; 78 L.T. 246), 112, iv.
- Durham Bros. v. Robertson** (L.R. [1898] 1 Q.B. 765; 78 L.T. 438), 96, vii.
- Duthy and Jesson's Contract, in re** (L.R. [1898] 1 Ch. 419; 78 L.T. 223), 120, vi.
- Duxbury v. Sandiford** (78 L.T. 230), 106, iii.
- ECCLES AND OTHERS v. MILLS AND OTHERS** (L.R. [1898] A.C. 360; 78 L.T. 206), 106, vi.
- Ehrman v. Bartholomew** (L.R. [1898] 1 Ch. 671), 102, iii.
- Ellis v. Pond** (78 L.T. 125), 23, 79, v.
- FELL v. THE OFFICIAL TRUSTEE OF CHARITY LANDS** (78 L.T. 474), 99, iv.
- Field S.S. Co. v. Burr** (L.R. [1898] 1 Q.B. 821; 78 L.T. 293), 117, vii.
- Fox v. Star Newspaper Co.** (L.R. [1898] 1 Q.B. 636; 78 L.T. 311), 112, i.
- Foxwell and Others v. Van Grutten** (78 L.T. 231), 121, viii.
- Friend, in re; Friend v. Young** (78 L.T. 222), 122, ii.
- Furness v. Beresford** (York Election Petition) (L.R. [1898] 1 Q.B. 495; 78 L.T. 187), 111, i.
- GILL v. WORRALE; in re RUBBINS** (78 L.T. 218), 122, i.
- Glengyle, the** (L.R. [1898] P. 97; 78 L.T. 139), 117, iv.
- Goetz, Jonas & Co., in re** (L.R. [1898] 1 Q.B. 787; 78 L.T. 399), 97, iv.
- Gregory v. Serle; in re Serle. Itter's Claim** (L.R. [1898] 1 Ch. 652; 78 L.T. 384), 136, v.
- HALL v. LAUNSPACH** (L.R. [1898] 1 Q.B. 513; 78 L.T. 243), 112, ii.
- Harrop v. Ossett Corporation** (78 L.T. 387), 111, vi.
- Hart's Divorce Bill** (L.R. [1898] A.C. 806), 105, ix.
- Hemming v. Davies** (L.R. [1898] 1 Q.B. 660; 78 L.T. 500), 102, vii.
- High Wycombe Corporation v. Thames Conservators** (78 L.T. 463), 116, iv.
- Hill, Clark & Co. v. Dalgety & Co.** (L.R. [1898] A.C. 343), 23, 65, i.
- Hill v. Crediton Urban District Council** (78 L.T. 351), 115, iii.
- Hill v. Gage; in re Gage** (L.R. [1898] 1 Ch. 498; 78 L.T. 347), 115, v.
- Hobson v. Tulloch** (L.R. [1898] 1 Ch. 424; 78 L.T. 224), 121, i.
- Hockay v. Western** (L.R. [1898] 1 Ch. 350), 23, 76, i.
- Hollinside, the** (L.R. [1898] P. 131), 118, v.
- Home Marine Insurance Co. v. Smith** (L.R. [1898] 1 Q.B. 829; 78 L.T. 465), 118, iii.
- Hulton v. Annan** (L.R. [1898] A.C. 289), 120, i.
- Hummel v. Hummel** (L.R. [1898] 1 Ch. 642; 78 L.T. 518), 122, v.
- Humphreys, in re; e. p. Lloyd-George and Another** (L.R. [1898] 1 Q.B. 520; 78 L.T. 182), 98, i.
- Hunt v. Fripp** (L.R. [1898] 1 Ch. 675), 23, 63, iv.
- JACOB v. JACOB** (78 L.T. 451), 103, iv.
- Jennings v. Jennings** (L.R. [1898] 1 Ch. 378), 23, 76, v.
- Johnson v. Russian Spratts, Ltd.; in re the Defendants** (78 L.T. 480), 100, iv.
- Johnston and Others v. the Consumers' Gas Co. of Toronto** (78 L.T. 270), 104, v.
- Jones, in re; Richards v. Jones** (L.R. [1898] 1 Ch. 438), 23, 88, iv.
- Jones v. Walters** (78 L.T. 167), 102, v.
- KAYE v. CROYDON TRAMWAYS CO.** (L.R. [1898] 1 Ch. 358; 78 L.T. 237), 100, ii.
- Keck & Hart's Contract, in re** (L.R. [1898] 1 Ch. 617; 78 L.T. 287), 117, i.
- Keeble & Stillwell's Fletton Brick Co., in re** (78 L.T. 383), 120, iv.
- Kent Goldfields Syndicate, in re** (L.R. [1898] 1 Q.B. 754; 78 L.T. 443), 100, iii.
- Kettlewell v. Kettlewell** (L.R. [1898] P. 138), 23, 71, vi.
- Kinnis v. Graves** (78 L.T. 502), 116, i.
- Knight v. Langport District Drainage Board** (L.R. [1898] 1 Q.B. 588; 78 L.T. 260), 114, vii.

**Knight v. North Metropolitan Tramways Co.** (78 L.T. 227), 110, iii.  
**Kotchie & Another v. Golden Sovereigns, Ltd.** (78 L.T. 409), 105, xii.  
**LANCASTER v. BARNES DISTRICT COUNCIL** (L.R. [1898] 1 Q.B. 855; 78 L.T. 355), 113, iv.  
**Land Mortgage Bank of Florida, Ltd., in re** (L.R. [1898] 1 Ch. 444; 78 L.T. 156), 100, vii.  
**Leeds and Hanley Theatre of Varieties v. Broadbent** (L.R. [1898] 1 Ch. 343), 23, 75, iv.  
**Leicester County Council v. Assessment Committee of Leicester** (78 L.T. 463), 114, iv.  
**Levy v. Stogdon** (L.R. [1898] 1 Ch. 478; 78 L.T. 185), 120, v.  
**Lewis v. Stephenson** (78 L.T. 165), 106, iv.  
**Liquidation Estates Purchase Co. v. Willoughby** (L.R. [1898] A.C. 321; 78 L.T. 329), 97, i.  
**Llewellyn v. Vale of Glamorgan Railway** (L.R. [1898] 1 Q.B. 473), 23, 80, vi.  
**Lloyd-George, e. p.; in re Humphreys** (L.R. [1898] 1 Q.B. 520; 78 L.T. 182), 98, i.  
**Lodge v. Huddersfield Corporation** (L.R. [1898] 1 Q.B. 847; 78 L.T. 422), 108, iv.  
**Lodge v. Huddersfield** (L.R. [1898] 1 Q.B. 859; 78 L.T. 582), 112, x.  
**London County Council v. Edwards** (78 L.T. 558), 113, vii.  
**London County Council, e. p.; Reg. v. Justices of London** (78 L.T. 559), 108, ii.  
**London and North-Western Railway v. Donellan** (78 L.T. 575), 114, iii.  
**London and North-Western Railway v. Rural District Council of Run-corn** (L.R. [1898] 1 Ch. 501; 78 L.T. 343), 113, iii.  
**London Tramways Co., Limited, v. London County Council** (78 L.T. 361), 111, vii.  
**Lowe, in the goods of** (78 L.T. 566), 96, ii.  
**Lower Rhine and Wurtemberg Insurance Association v. Sedgwick** (L.R. [1898] 1 Q.B. 789; 78 L.T. 496), 118, vi.  
**MACFIE v. CALLANDER AND ORAN RAILWAY** (L.R. [1898] A.C. 270), 107, ii.

**Madras, the** (L.R. [1898] P. 90; 78 L.T. 325), 117, v.  
**Manchester Brewery Co. v. North Cheahire and Manchester Brewery** (L.R. [1898] 1 Ch. 539; 78 L.T. 537), 119, v.  
**Mander v. Ridgway** (L.R. [1898] 1 Q.B. 501), 23, 68, v.  
**Manners v. Pearson & Son** (L.R. [1898] 1 Ch. 581; 78 L.T. 432), 95, i.  
**Mansfield Corporation v. Butterworth** (78 L.T. 527), 108, viii.  
**Marks v. Frogley** (L.R. [1898] 1 Q.B. 888; 78 L.T. 607), 121, iv.  
**Martin v. Martin** (78 L.T. 568), 105, vii.  
**Martin v. Martin and Velleman** (78 L.T. 170), 112, iii.  
**Mayfair Property Co. in re; Bartlett v. Same Co.** (78 L.T. 302), 101, iii.  
**Maynards, Ltd., in re** (L.R. [1898] 1 Ch. 515; 78 L.T. 150), 100, vi.  
**McGuffie v. Burleigh** (78 L.T. 264), 108, iii.  
**Meredith, in re; Stone v. Meredith** (78 L.T. 492), 122, iv.  
**Merry v. Pownell** (78 L.T. 146), 23, 83, iii.  
**Millard v. Millard and Bastone** (78 L.T. 471), 105, v.  
**Molynaux v. Fletcher and Clarke** (L.R. [1898] 1 Q.B. 648), 23, 87, iii.  
**Moukswell v. Thompson** (L.R. [1898] 1 Q.B. 479), 23, 83, ii.  
**Monson's Settled Estates, in re** (L.R. [1898] 1 Ch. 427; 78 L.T. 225), 116, vi.  
**Montgomery, Jones and Company v. Liebethal & Co.** (L.R. [1898] 1 Q.B. 487; 78 L.T. 211), 112, v.  
**Montgomery, Jones and Company v. Liebethal & Co., in re An Arbitration between** (78 L.T. 406), 96, v.  
**Mundy and Roper, in re** (78 L.T. 547), 116, vii.  
**NAH v. DIX** (78 L.T. 445), 120, iii.  
**National Dwellings Society, Ltd.** (78 L.T. 144), 100, v.  
**New British Iron Co., Ltd., in re; e. p. Beckwith** (78 L.T. 165), 23, 67, v.  
**New Ixion Tyre and Cycle Co., Ltd., v. Spilsbury** (78 L.T. 543), 111, v.  
**New Par Consols, in re** (L.R. [1898] 1 Q.B. 578; 78 L.T. 312), 100, viii.  
**New Zealand Loan and Mercantile Agency Co. v. Morrison** (L.R. [1898] A.C. 349), 23, 67, ii.

- Newall v. Newall and Platt** (78 L.T. 203), 104, viii.
- Nickels v. Nickels**; *in re Nickels* (L.R. [1898] 1 Ch. 680; 78 L.T. 879), 119, vii.
- North-Eastern Railway v. Overseers of Dalton** (78 L.T. 524), 115, iv.
- Nussey, Ellen, in the goods of** (78 L.T. 169), 121, iii.
- OLYMPIA, LTD., in re** (78 L.T. 159), 101, i.
- Orchard v. Bush** (78 L.T. 557), 105, xi.
- PAGET v. PAGET** (L.R. [1898] 1 Ch. 470; 78 L.T. 306), 109, vi.
- Pender v. Taddei** (L.R. [1898] 1 Q.B. 798; 78 L.T. 581), 113, i.
- Perry Almshouses, in re** (L.R. [1898] 1 Ch. 391), 23, 64, iii.
- Petchey v. Taylor** (78 L.T. 501), 96, iii.
- Phillips v. Owners of s.s. Ruby; the Ruby** (78 L.T. 235), 23, 85, v.
- Piers, in re**; *e. p. Piers* (L.R. [1898] 1 Q.B. 627; 78 L.T. 814), 97, iii.
- Poyser v. Boyfus**; *in re Perkins* (78 L.T. 216), 98, ii.
- Prior v. Slaithwaite Spinning Co.** (L.R. [1898] 1 Q.B. 881; 78 L.T. 532), 103, vii.
- QUEENSLAND NATIONAL BANK v. PENINSULAR & ORIENTAL STEAM NAVIGATION Co.** (L.R. [1898] 1 Q.B. 567), 23, 84, iv.
- REG. v. BOWMAN AND OTHERS** (L.R. [1898] 1 Q.B. 663; 78 L.T. 230), 107, vi.
- Reg. v. Clemens** (L.R. [1898] 1 Q.B. 556; 78 L.T. 204), 109, iv.
- Reg. v. Cockshot and Others**; *e. p. Rickerby* (L.R. [1898] 1 Q.B. 582; 78 L.T. 168), 102, vii.
- Reg. v. Cotham**; **Reg. v. Pilkington** (L.R. [1898] 1 Q.B. 802; 78 L.T. 468), 107, v.
- Reg. v. Douglas and Others** (L.R. [1898] 1 Q.B. 560; 78 L.T. 198), 106, ii.
- Reg. v. Humphrey** (L.R. [1898] 1 Q.B. 875; 78 L.T. 360), 104, ii.
- Reg. v. Justices of London**; *e. p. London County Council* (78 L.T. 559), 108, ii.
- Reg. v. Justices of West Riding**; *e. p. Shaw* (L.R. [1898] 1 Q.B. 503), 23, 73, v.
- Reg. v. Leigh Rural Council** (L.R. [1898] 1 Q.B. 836; 78 L.T. 604), 109, i.
- Reg. v. Robinson and Others (Justices)** (L.R. [1898] 1 Q.B. 734; 78 L.T. 350), 98, iii.
- Reg. v. Sharman**; *e. p. Denton* (L.R. [1898] 1 Q.B. 578; 78 L.T. 320), 107, iv.
- Reg. v. Stewart** (L.R. [1898] 1 Q.B. 552; 78 L.T. 256), 102, iv.
- Richards v. Jones**; *in re Jones* (L.R. [1898] 1 Ch. 438), 23, 88, iv.
- Ripley and Sons' Trade Mark, in re** (78 L.T. 367), 119, iii.
- Ripon City, the** (otherwise *the Silvia*) (L.R. [1898] P. 78; 78 L.T. 296), 117, iii.
- Ritson v. Ritson**; *in re Ritson* (L.R. [1898] 1 Ch. 667), 111, ii.
- Roberts, in the goods of Mary Ann** (L.R. [1898] P. 149; 78 L.T. 390), 95, iv.
- Robinson v. Robinson** (L.R. [1898] P. 153; 78 L.T. 392), 105, ii.
- Robinson v. Robinson and Wilson** (78 L.T. 391), 105, iii.
- Robinson v. Sunderland Corporation** (78 L.T. 194), 108, v.
- Rochdale and Haslingden Unions**; *in re An Arbitration between* (78 L.T. 563), 109, ii.
- Rochefoucauld v. Boustead** (L.R. [1898] 1 Ch. 550), 119, viii.
- Rollason's Registered Design, No. 2** (78 L.T. 511), 112, ix.
- Roper v. Knott** (L.R. [1898] 1 Q.B. 868; 78 L.T. 594), 103, i.
- Royal College of Music v. Parishes of St. Margaret and St. John, Westminster** (L.R. [1898] 1 Q.B. 809; 78 L.T. 441), 114, v.
- Ruabon Steamship Co. v. London Assurance** (L.R. [1898] 1 Q.B. 722; 78 L.T. 402), 118, iv.
- Ruby, the, No. 2, Phillips v. Owners of s.s. Ruby** (78 L.T. 235), 23, 85, v.
- Ruby, the, Sandford v. Stewart** (78 L.T. 267), 23, 85, iii.
- Rundle v. Hearle** (78 L.T. 561), 104, vi.
- Russell v. Russell** (L.R. [1898] A.C. 307), 112, viii.
- Russian Spratts, Ltd.**; *in re* (78 L.T. 480), 100, iv.
- SALE HOTEL AND BOTANICAL GARDENS, LIMITED, in re**; *e. p. Hesketh* (78 L.T. 368), 101, v.
- Salsbury v. Buckle**; *in re Averill* (L.R. [1898] 1 Ch. 523; 78 L.T. 320), 121, vi.
- Sandford v. Stewart; the Ruby** (78 L.T. 267), 23, 85, iii.

Schwerzerhof v. Wilkins (L.R. [1898]  
1 Q.B. 640; 78 L.T. 229), 97, ii.  
Smith v. Richmond (L.R. [1898]  
1 Q.B. 688; 78 L.T. 174), 114, viii.  
South African Territories, Ltd., v.  
Wallington (L.R. [1898] A.C. 309;  
78 L.T. 426), 101, vi.  
South Hetton Coal Co. v. Haswell,  
etc., Coal Co. (L.R. [1898] 1 Ch.  
465; 78 L.T. 366), 119, ii.  
Southland Frozen Meat Co. v.  
Nelson Bros. (78 L.T. 863), 96, iv.  
Southwark and Vauxhall Water Co.  
v. Hampton Urban District  
Council (78 L.T. 420), 115, ii.  
Spencer v. Lancashire and Yorkshire  
Railway (L.R. [1898] 1 Q.B. 643;  
78 L.T. 323), 114, ii.  
Spooner v. Browning (L.R. [1898]  
1 Q.B. 528), 23, 79, vi.  
Stephenson v. Garnett (L.R. [1898]  
1 Q.B. 677; 78 L.T. 371), 111, viii.  
Stevens, *in the goods of* (L.R. [1898]  
P. 126; 78 L.T. 389), 96, i.  
Stockport Ragged, &c., School, No. 2,  
*in re* (L.R. [1898] 1 Ch. 610; 78  
L.T. 290), 99, iii.  
Stockport Union Assessment Com-  
mittee v. London and N.W.  
Railway (78 L.T. 180), 114, vi.  
Stone v. Meredith; *in re* Meredith  
(78 L.T. 492), 122, iv.  
Sumpter v. Hedges (L.R. [1898]  
1 Q.B. 673; 78 L.T. 378), 102, ii.  
Sydney Municipal Council v. Young  
(78 L.T. 865), 99, vi.

TATHAM, BROMAGE & Co. v. BURR (*the  
Engineer*) (78 L.T. 473), 118, iii.  
Taylor and Others v. Jackson (78 L.T.  
555), 104, iv.  
Thomas v. Roberts (L.R. [1898] 1  
Q.B. 657), 98, vi.  
Thorne v. Gibbs; *in re* Gibbs (L.R.  
[1898] 1 Ch. 625; 78 L.T. 289),  
116, ii.  
Trinder, Anderson & Co. v. North  
Queensland Insurance Co. (78 L.T.  
485), 23, 20, vii.; 118, i.

VERNEY'S SETTLED ESTATES, *in re*  
(L.R. [1898] 1 Ch. 508; 78 L.T.  
191), 116, v.

Waikato (OWNERS OF CARGO ON BOARD)  
v. NEW ZEALAND SHIPPING Co. (L.R.  
[1898] 1 Q.B. 645; 78 L.T. 197,  
117, vi.  
Waller v. Atkinson; *in re* Atkinson  
(L.R. [1898] 1 Ch. 637; 78 L.T.  
317), 104, vii.  
Ward v. Corporation of Portsmouth  
(78 L.T. 255), 99, ii.  
Ward v. Little; *in re* Gyde (78 L.T.  
449); 115, vi.  
*Warsaw, the* (L.R. [1898] P. 127; 78  
L.T. 327), 117, ii.  
Waud, *e. p.*; *in re* Cronmire (78 L.T.  
170 and 483), 104, i.  
Waverley Type Writer, *in re*;  
D'Esterre v. Same (L.R. [1898] 1  
Ch. 699; 78 L.T. 593), 102, i.  
West v. Williams (L.R. [1898] 1 Ch.  
488; 78 L.T. 147), 110, vi.  
West London and General Permanent  
Benefit Building Society, *in re* (78  
L.T. 393), 99, i.  
Westport Coal Co., Limited, v.  
McPhail (78 L.T. 490), 98, iv.  
White v. White (L.R. [1898] P. 124),  
105, vi.  
White's Charities, *in re*; Charity  
Commissioners v. London Cor-  
poration (L.R. [1898] 1 Ch. 659;  
78 L.T. 550), 121, iii.  
Whitwham v. Piercey; *in re* Piercey  
(L.R. [1898] 1 Ch. 565; 78 L.T.  
277), 121, v.  
Whitwham v. Watkin (78 L.T. 189),  
101, iv.  
Wickens v. Shuckburgh; *in re* Bills  
of Sale Act, 1882 (L.R. [1898] 1  
Q.B. 543; 78 L.T. 213), 98, v.  
Wingfield v. Wingfield (78 L.T. 568),  
105, viii.  
Winstone, *in the goods of* (L.R. [1898]  
P. 143; 78 L.T. 535), 113, ii.  
Woodham v. London County Council  
(L.R. [1898] 1 Q.B. 863; 78 L.T.  
553), 110, v.  
Woods & Lewis's Contract, *in re* (L.R.  
[1898] 1 Ch. 433; 78 L.T. 250),  
121, ii.

YOUNG v. ADAMS (78 L.T. 506), 99, vii.  
Young v. Waller (78 L.T. 506), 101, i.

ZALINOFF v. HAMMOND (78 L.T. 456),  
96, vi.



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## I.—CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

RECENT events have called public attention to the advantages of devising some method of settling disputes between masters and men, and have given rise to the expression of that very common and often very hopeless suggestion—that something ought to be done. But, in addition to that confused cry, there has been heard a demand for what is called compulsory arbitration. It may be permissible, in writing, for lawyers, who, I hope, will always retain a desire to use exact language, to observe that the phraseology of this cry is somewhat embarrassing. A lawyer understands by arbitration the voluntary settlement by reference to a third person of some existing dispute as to some existing right or wrong. Those who cry for compulsory arbitration desire the reference, by legal compulsion, to some tribunal of the question what wages masters ought to pay in the future, and what wages men ought to work for; in other words, what is asked for is that some tribunal shall be constituted which is to make contracts to bind men in the future.

I have never seen any definition or explanation of what is meant by the demand for compulsory arbitration in trade disputes; but the only meaning that can be put upon it

## 2 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

is that men shall be compelled to submit their disputes as to future wages to a judge, and shall be compelled to carry into execution the decision of the judge; or, to put it in other words, it is that a body of masters who wish to make their own contracts for labour, shall have these contracts settled by some third person, and that then they shall be compelled to carry on their works and pay the rate of wages mentioned in the judgment—and that, I suppose, whether they gain or lose by their works so carried on. For how long must they carry on their works? Will neither loss of profits, nor old age, nor desire for leisure excuse them from this obligation to carry them on at the rate of wages fixed by the arbitration? And how is the obligation to be enforced? Is it to be specifically performed, and the master to lie in prison for contempt of court till he again performs the unwilling task of paying the wages decreed? or is he to be liable for an action for damages at the suit of each workman?

And in like manner for the workman. Is he to be compelled to work at the wages fixed? Is he to be adscript to the factory or the coalpit? May he be stopped from emigration by a writ of *ne exeat regno*? May he be kept in prison till he works on at the wages fixed, and this till death liberates him from the effects of compulsory arbitration?

Some of these difficulties may no doubt be removed by careful legislation, but only by at the same time lessening the efficacy of the remedy. It might, for instance, be provided that no award should remain in force for more than a year, or that disobedience to the award should entail only the liability to some stipulated payment, whether by way of fine or damages. But unless the penalty be such as practically to compel obedience, the award may fall inoperative: and, after all, the great difficulty will remain—that compulsory arbitration is a scheme for forcing men to do, on the terms imposed by a third person, that which in a free state they ought only to

do, and can only well do, on their own terms and of their own free will. Whether I shall work at all, and for what wages I will work, are matters of volition ; whether I will employ a man, and what wages I will pay him, are equally matters of volition ; if I choose to refer the terms for settlement by a third person, that is equally an act of volition, and it is reasonable that I should be bound by my voluntary act ; but to compel me to do some personal act on the terms fixed by some third person is degrading alike to me and to the work, which I shall do with an ill will, and therefore badly.

When the London Chamber of Commerce took in hand the subject of conciliation in trade disputes, they were naturally induced to consider the question of compulsory arbitration. Mr. Boulton, speaking in behalf of the Committee of the Chamber, gave evidence before the Royal Commission on Labour, which is very important as expressing the judgment of a body of business men on this question.

"The next question, I think," said the chairman of the Commission, "which you wish to dwell upon is voluntary conciliation and arbitration as regards engagements and future employment?" "We carefully studied," said the witness, "all the attempts which had been made, at least all that we could get hold of, for compulsory arbitration as regards the future rates of wages ; and we arrived at the conclusion that whereas attempts have been made for the last five hundred years to do so, they have all more or less ended in failure, and we also arrived at the conclusion that it would be quite impossible for any compulsory arrangement to fix future rates for labour, because, supposing any court were appointed, supposing it arrived at a decision, supposing it said that in any particular trade or in any particular district the wages should be so-and-so for the next twelve months, or for the next six months, it would be absolutely impossible to compel either the workmen to work at those wages if they did not like them, or for the employers



#### 4 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

to open their factories if they thought the wages were higher than they could afford to pay."

"Would that not apply," said the chairman, "to an award which was the result of a voluntary submission to arbitration?" To which Mr. Boulton replied, "It no doubt would; but if an award is arrived at by the wishes of the parties themselves, we have confidence that in the future—and our experience shows it so far by all our awards having been honourably kept on both sides—that there would be a growing feeling that it would be extremely dishonourable to break any arrangement of that sort voluntarily arrived at, and moreover in any dispute which came before the public it would, no doubt, place the sympathy of the public on the side of that one particular party who had kept to their engagements, as against the one who had broken theirs."

"And you do not therefore think," the chairman asks, "that the inability to enforce by legal procedure an award upon a large body of men is any reason why arbitration should not be encouraged, being of opinion that the force of public opinion would go for very much in causing an award to be observed?" Mr. Boulton replies, "Undoubtedly we think that it would. We further think that it would be quite impossible to compel workmen—in fact, we see no way of compelling workmen to work at wages which do not suit them, because after your decision in your so-called compulsory court you still have a chance of a strike or a lock-out. How can you force a large body of workmen to work at wages which do not suit them? Supposing you bring before a magistrate five hundred men or a thousand men, the magistrate may fine them, but it would be very difficult to enforce the fines. He cannot say, You shall work at that particular factory, because they may say, We do not choose to work at that particular trade, or, We do not choose to work in that particular district; we will go to another district. You could not enforce the award."

To the chairman's question, "But you do not think that is conclusive against the usefulness of arbitration in such cases?" the reply is, "We do not see any way out of it, except by voluntary arbitration and conciliation. In looking at all the past legislation on the subject, we found there had been an entire failure in every case where compulsory powers had been attempted to be enforced."

I will now advert shortly to the history of legislation on trade disputes, and first in England.

The earliest and most drastic effort to regulate the rate of wages by law is undoubtedly the celebrated Statute of Labourers of Edward III., passed shortly after the black death of 1348. That enactment applied to every man and woman within the kingdom, whether free or serf, of whom it could be predicated that he or she was of bodily capacity and under the age of sixty years, did not live of merchandize, did not practise a craft as artificer, did not possess independent means of livelihood, or land of his own on the cultivation of which he occupied himself, and was not already engaged in service. It provided that every such person should, when required to undertake work fitting to his or her condition, undertake the same, and should receive the same wages and allowances as had been accustomed in the place of the service in the 20th year of King Edward's reign, and the five or six preceding years : in default of obedience to the obligation thus created, the offender might be arrested and sent to prison till he or she found security that he or she would serve as required. This principal enactment was hedged round with accessory provisions ; if a servant departed from his service before the time agreed upon, he was to be imprisoned : the giving as well as receiving of wages beyond the statutory limit was made an offence : the giving of alms to a beggar who was able to work was equally made an offence. The statute is very instructive reading for those who advocate compulsory arbitration : it will suggest the kind of enactments by which the

## 6 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

compulsion can alone be made, or rather sought to be made, effective. The ill success of this drastic measure is familiar. The following year another Statute of Labourers was passed, the preamble of which sets out the signal failure of the previous statute—that “servants having no regard to the said Ordinance but to their ease and singular covetise do withdraw themselves to serve great men and others unless they have livery and wages to the double or treble of that they were wont to take.” The statute then went on to fix certain wages to be paid to servants in husbandry—for the threshing of various kinds of corn, and to the several sorts of artificers and labourers. The success of this statute was no greater than that of its predecessor, for in 1368 Parliament enacted that the first Statute of Labourers should be put in force, and that the justices of the peace should determine points under this Act. But the struggle to regulate wages by statute was not abandoned, and Acts were passed in the reigns of Henry VI. and Henry VII. with this object in view. But in vain, for the laws of political economy were stronger than the laws of England. It is not, however, necessary to pursue this hopeless struggle of the Legislature. I will come to a much later date and to a course of legislation more like that now in force with regard to disputes between masters and men.

In the year 1800 an Act was passed for settling disputes that might arise between masters and workmen engaged in the cotton manufacture in England (39 & 40 Geo. III. c. 90), which provided that in all cases where the masters and workmen could not agree respecting the prices to be paid for work done or to be done, and, finally, in all cases of dispute or difference between masters and men touching the trade which could not otherwise mutually be settled between them, it should be lawful for the masters and men, “or either of them,” to demand an arbitration or reference of such matter: each party was to appoint an arbitrator: the arbitrators were

empowered to summon witnesses and administer oaths: if they failed to agree they were to state the points in difference to a justice of the peace, who was finally to decide the matter. The Act provided that the award of the arbitrators or the decision of the justice should "be final and conclusive" between the parties differing; and it provided this sanction for obedience: that if any party refused to sign the submission or to appoint an arbitrator, or to submit to the award, he should forfeit to the other party the sum of £10. It is obvious that such a provision would produce little or no result in a case like the great strikes of the present day.

In the same session of Parliament another statute was passed in reference to masters and workmen engaged in any manufactures (39 & 40 Geo. III. c. 106), which, after dealing with the question of combinations between masters and men respectively, established a system of arbitration for all disputes in respect of the prices to be paid for "work actually done," for injury or delay in doing such work, or disputes touching any agreement for work or wages. The subject-matter of reference does not, it will be observed, include questions of what ought to be paid in the future, but only questions which had arisen out of past or existing relations. The system of arbitration provided by this statute followed the lines of the previous Act of the same session; but the penalty for non-performance was more severe: for every one convicted of refusing to do what he was directed by the award to do, might be committed to prison till performance.

In 1803 a statute was passed applicable to the cotton trade in Scotland—a statute which followed the lines and in many parts the language of the English Act relating to the cotton trade there: and would rather have led one to suppose that the English Act was working well—were it not that in the following year an Act was passed to amend the English Act of 1800 in relation to that trade, which recited that the

## 8 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

mode of arbitration intended to be established by the Act had not produced the beneficial effects expected therefrom. It accordingly repealed the machinery of the Act of 1800, and provided that disputes should be settled by a new machinery. If the parties in difference agreed to abide by the decision of a justice, he might decide the dispute: if they did not so agree, then he might, on the request of either of the parties, nominate not less than four nor more than six persons—half masters, or agents, or foremen, and half weavers, out of which halves respectively the masters and weavers were to choose one. These two arbitrators were to decide the dispute, and in default it was to be settled by a justice. The payment of £10 by a defaulting party to the other was the only sanction for the performance of the award.

In 1813 (53 Geo. III. c. 74) a statute was passed which introduced into the cotton trade in Ireland a similar method of deciding disputes by referees appointed by justices.

In 1824 Parliament was minded to consolidate and amend the previous legislation on the subject, and by the statute 5 Geo. IV. c. 96, repealed the previous legislation, and re-enacted a system of referring the dispute primarily to referees appointed by a justice of the peace, or finally by a justice. The disputes capable of being thus referred, are defined by the general words previously used, "disputes arising out of or touching the particular trade or manufacture, or contracts relative thereto which cannot be otherwise mutually adjusted and settled," but followed by a most important limitation, "nothing in this Act contained shall authorize any justice or justices acting as hereinafter mentioned, to establish a rate of wages, or price of labour or workmanship, at which the workmen shall in future be paid, unless with the mutual consent of both master and workmen."

That this statute was not entirely a dead letter may be inferred from the fact that it was amended in particulars not needful for me to mention by the following Acts passed in the

earlier years of the Queen (1 Vict. c. 67 ; 8 & 9 Vict. c. 77 ; 8 & 9 Vict. c. 128).

A more important step was taken in 1867 (30 & 31 Vict. c. 105), when Parliament, without repealing the previous Acts, authorized the Crown to license Councils of Conciliation, to consist of not less than two masters and two workmen and a chairman, and enacted that the awards to be made by these equitable Councils of Conciliation, as they are called in the statute, might be enforced in the same way as awards under the Act of 1824. The Act does not appear to deal in any way with the future rates of wages. Again, in 1872, Parliament dealt with the subject again, and made provisions for the terms and operation of agreements between masters and men. The Act then passed enabled the contracting parties to bind themselves as to future wages to be settled by arbitration ; and it also enabled them to choose or to define the manner of appointment of the arbitrators or umpire by whom they were to be bound ; and it further provided that the parties were to be mutually bound by the agreement upon the master or his agent giving to the workman, and the workman accepting, a printed copy of the agreement.

These statutes of 1867 and 1872 appear to have produced little or no results. Mr. Boulton, the witness from the London Chamber of Commerce before the Royal Commission on Labour, speaking in November, 1892, said that he believed that in no case had these statutes been acted upon. Perhaps the power of enforcing the awards given by these statutes discouraged recourse being had to them.

Then—two years ago (by the statute 59 & 60 Vict. c. 30)—Parliament in its wisdom repealed the Acts of 1824, 1867, and 1872, and introduced a system which gives a new position to the Board of Trade in respect of these disputes. The Act in the first place provides for the registration of Boards of Conciliation ; but these Boards practically derive all their

## 10 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

powers from the consent of the parties, and owe little to legislation or registration. In the next place, the Board of Trade is, in the event of any dispute between employers and workmen, clothed with power to do four things—first, to direct an inquiry into the causes and circumstances of the difference ; secondly, to facilitate the meeting of the parties in difference ; thirdly, on the application of one of the parties in difference to appoint a person or persons to act as a conciliator or as a Board of Conciliation ; and fourthly, on the application of both parties to appoint an arbitrator.

With reference to the first power given by the statute, viz. to “inquire into the causes and circumstances of the difference,” it is to be observed that the statute gives no judicial power to the inquirer, and requires from him no public statement of the results of his inquiry or of his opinion on the merits of the controversy ; he has no power to compel the attendance of witnesses or the production of documents, nor has he the power to administer an oath : and without such powers his investigation might well fail except when both parties desire the inquiry. It may be suggested that if one party gave evidence, the other would be under a moral compulsion to do the same ; but that appears to me far from certain. At the same time, it must be admitted that to clothe the inquirer with the powers without which his inquiry may well fail, would be to enable him to investigate the private affairs of men not desirous of disclosing them, and would probably be felt a serious interference with personal liberty.

In America no such sentiment appears to prevent the existence of a practice which is known as “mediation”—which includes the examination of witnesses on oath, and the expression of an opinion publicly on the evidence, the opinion not being in the nature of an award. This practice seems in some cases to have met with success, the Massachusetts Board of Mediation and Arbitration having reported that its

measures of mediation had succeeded, whilst those of arbitration had failed.

Inquiries have, I believe, been directed by the Board of Trade, and probably under the power thus conferred by the Act ; and the results have probably been useful in the compilation of the *Labour Gazette*, which is published under the authority of the Board of Trade ; but no public inquiry has ever, so far as I know, been made into the causes and circumstances of a trade difference.

An arbitrator is a person long known to our law ; but a conciliator is a new person, a new creation of the statute ; and one turns with some interest to see how his duties are defined. The definition is, like many other passages in which the collective wisdom of Parliament is expressed, rather curious. "He shall," says the Act, "inquire into the causes and circumstances of the difference, by communication with the parties, and *otherwise* shall endeavour to bring about a settlement of the difference." The notion that mere inquiry into the past history of the dispute is the main resource for conciliation, seems to underlie this sentence ; it is one of doubtful accuracy ; but the following words are wide and general, and fortunately are unambiguous. The Act appears to draw a distinction between the "amicable settlement" and the "settlement" of a dispute—the one appears to refer to a termination by treaty or agreement ; the other to include not only the amicable settlement, but the settlement by surrender of the one party to the other. What the Legislature, therefore, seems to have meant by the sentence I have cited was that the conciliator should inquire into the circumstances and causes of the difference—that he should do this, not by means of a regular formal inquiry with witnesses, but by communication with the parties, and that he should by all means in his power endeavour to bring about a settlement, whether by agreement or by the surrender of the one party to the demands of the other.



## 12 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

If, leaving our own country, we look abroad, we shall find that one of the early efforts at conciliation and arbitration in trade disputes was made in France by a law of the 18th of March, 1806, which established at Lyons a "conseil de prud'hommes" and a "bureau de conciliation." The council, as originally constituted, consisted of five "negociants fabricants" and four "chefs d'atelier," and was formed, as the law expresses it, to terminate by way of conciliation the small differences which daily arise, whether between the manufacturers and the workpeople or between the foremen (chefs d'atelier) and their fellow-workmen (compagnons) and apprentices, and also summarily to determine disputes to the amount of 60 frs. in respect of which conciliation had failed. To carry this jurisdiction into effect, a "bureau de conciliation" was to be open every day from 11 to 1, at which two members of the council—one from each class of members—were to be present.

No doubt in consequence of the success of the Lyons experiment, a decree was issued three years later (11 June, 1809), which provided for the establishment of "conseils de prud'hommes" in various districts of France, and extended their jurisdiction over the classes described as "les marchands fabricants, les chefs d'atelier, contre-maîtres, teinturiers, ouvriers, compagnons et apprentis." It is not needful to detail the provisions of this general law, or to point out in what particulars it varied from the original institution at Lyons: it is enough for my purpose to indicate the general scope of this French legislation which has probably not been without its influence on the history of trade institutions even in England. The "conseils de prud'hommes" do not undertake any adjustment of the future rates or conditions of labour.

Of all British colonies, New Zealand has shown the most anxious desire to subject the relations of master and man to the will and wisdom of its Legislature; and the result has been the formation of a wonderful code of labour laws which

regulate many matters usually left to voluntary agreement, and, above all things, for the present purpose, they have made arbitration in trade disputes compulsory, and the awards binding.

In 1894 there was passed in the colony an Act which provides for the registration and incorporation of societies lawfully associated for the purpose of protecting or furthering the interests of employers or workmen. On registration all the members of the society become subject to the jurisdiction given to a Board and the court by the Act. In like manner, a body representing any number of industrial unions may be registered as an industrial association. Under a previous Act of 1878 trade unions might be registered. We thus get three classes of registered bodies : Industrial unions ; industrial associations ; trade unions. In the next place, the Act of 1894 goes on to make provision with respect to industrial agreements, *i.e.* agreements between any of the following, *viz.* industrial unions, industrial associations, trade unions, and employers ; such an agreement may provide for any matter or thing affecting any industrial matter, or the prevention or settlement of an industrial dispute. Every industrial agreement is made binding on every person who, during the term of the agreement, is a member of any industrial union, or association, or trade union party to the agreement, and on every employer concurring in it. The Act then constitutes a Board of Conciliation in every industrial district, *i.e.* a part of the colony, to be determined from time to time by the Governor, and also a single Court of Arbitration for the whole colony. The Boards of Conciliation are elected by industrial unions of workmen and employers respectively, with the addition of a chairman, who is to be an impartial person, to be elected by the other members of the Board. Now what disputes can these Boards take cognizance of ? They are, first, disputes referred to them for settlement by or pursuant to an industrial agreement, and any industrial dispute

#### 14 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

in respect of which any party to the dispute may require, in a prescribed form, a reference to the Board ; so that any one party desirous of conciliation may compel another and unwilling party to submit the dispute to arbitration, or, failing that, to the court. For whenever the Board of Conciliation reports their inability to bring about a settlement of a dispute satisfactorily to the parties thereto, any party may require the reference of this dispute to the court, which is to consist of three members—one to be appointed on the recommendation of the representatives of the workmen, and another on that of the employers, and the third, who is to be a judge of the Supreme Court, by the Governor, *proprio motu*. The award of the court is to specify the persons on whom it is to be binding, and the period, not exceeding two years, during which its provisions may be enforced, during which period the award is binding upon all unions, associations, and persons upon whom it is declared to be binding.

Now, pausing here, we seem to have arrived at the somewhat formidable conclusion that a master who has never joined any trade or industrial union, may be brought against his will by an industrial union of men, first before the Conciliation Board, and then before the court, and be under an obligation for two years to carry on his business and pay wages at a rate which he may deem excessive, or on terms and subject to conditions which may make his business irksome and distasteful or ruinous to him. But, and this is noteworthy, as indicative of the character of the legislation, the individual workman is exposed to no such peril. He can only be reached through some industrial or trade union, or industrial association of which he has constituted himself a member.

The next question that arises is—How is such an award to be enforced ? The Act provides that it may be enforced in the same manner as a judgment of the Supreme Court to the same effect, against the property of any industrial or trade

union, or industrial association, or against the property or person of any individual ; but it is provided that no process shall issue for the enforcement of the award by payment from a union, or association, or person, of a greater sum than £500. Two points here seem to be clear—the one that as large a sum can be recovered from an individual employer as from an association which is a union of unions ; the other that a sum of £500 would certainly be a negligible quantity in the expenditure on a great strike like that of the engineers, and would therefore probably be inoperative as a restraint. But, beyond this, several questions occur. Suppose, for instance, an award directs an employer to pay to each of 250 workmen £2 a week for wages, and directs the delivery to the workmen of the materials of the industry in a given condition, and the master refuses compliance. Can the award be sued on by each workman for the £2 a week, or will the £500 limit operate when the employer has been directed to pay one week's wages to all his men which amount to £500, or will it only be reached when he has paid £500 to each workman ? Again, is his refusal to supply the materials as directed a contempt of court ? and can he be imprisoned indefinitely at the discretion of the court ? These questions I can ask, but I have no materials to enable me to answer them.

The labour legislation of New Zealand, including the statutes regulating trade disputes, is of a highly experimental character, and its results will be watched with much interest in this country. Already voices are heard on both sides—some alleging that the results are highly successful—others averring that capital is driven from the colony by the heavy fetters placed on its employment. Mr. and Mrs. Sidney Webb are now, I believe, on a visit to the colony to study these questions, and we may expect much information from their labours. But a much longer time must probably elapse before the fruit of the enactments will ripen in a new country, where the soil must yet for a long time absorb the chief

labour of the community, and where, therefore, the legislation with regard to industrial disputes must touch only a small portion of the labouring classes.

In Nova Scotia again an Act has been passed which relates to labour engaged in mining operations; and recourse has there been had to a plan for enforcing submission to the award of the arbitrators, which it may be worth while to mention. The employer, on receiving notice of the appointment of arbitrators, may retain the wages of the employees concerned in the arbitration for the fourteen days preceding the appointment of the arbitrators—which wages shall be paid into a specified bank, and the employer is also required to pay into the bank an equal amount; then, if the award goes against the employees, and all of them do not at once submit to the award, the wages paid into the bank are forfeited to the employer after deducting the costs of the arbitration; and a converse provision applies when the award is against the employer. I am not aware that this provision has ever been acted upon; and it is one which would evidently give rise to considerable difficulties.

In the Colony of Victoria another experiment with regard to wages has been tried. A special Board has been created by a statute of 1896 with the duty of determining the minimum rate of wages for making wearing apparel, furniture, and bread.

I am aware that the survey which I have thus attempted with reference to legislation on the settlement of wages is of a very imperfect character—a very restricted attempt at a study in comparative legislation; and further, that in many cases I am quite without information as to the results of the enactments made. So far as my review of the subject goes, it tends to make one distrust the feasibility of any attempt to regulate wages by the decisions of a court. The broad common-sense objections to compulsory arbitration in the matter of wages which occur to every one who thinks

carefully of the matter, are not yet removed or shaken by experimental legislation at home or in the colonies ; and for myself, I hope that it will be long before the tables are so far turned on the employers of labour as that the Statute of Labourers of Edward III. shall form a precedent for a Statute of Masters.

The method from which most is to be hoped for in the future as a means of avoiding the terrible industrial struggles of strikes or lock-outs, appears to me to be the development of voluntary Councils of Conciliation constituted of representatives of employers and employed with a recourse to arbitration in the last resort. In a Conciliation Board so constituted as that a tie in votes is possible, and without some further provision for a decision, it is obvious that an attempt at conciliation may fail, and that in that event nothing is left but an industrial war : in the event of an equal vote in the Board of Conciliation, and in that event only, it seems to me that masters and men may reasonably be asked to admit some form of arbitration. To this it may be replied that such an arbitration in such an event is open to all the evils attending on compulsory arbitration ; and that a master may be compelled to carry on his works, and a man to give his labour, on terms which they respectively deem unjust. I confess the difficulty, and I would avoid it by giving to each party to the arbitration a power after the award to determine the agreement by a short notice, and so to bring within narrow limits the evils to be feared. With this provision, the reference to arbitration gives an opportunity for fully threshing out the question in difference, and it gives a pause before war can be declared ; and both these things are of high value. I cannot but think that a reference to arbitration in the event of the failure of conciliation, and coupled with a power of speedily determining the agreement if the award be found unendurable, is better than an immediate recourse to industrial warfare.

## 18 CONCILIATION AND ARBITRATION IN TRADE DISPUTES.

In this conclusion I am greatly fortified by the successful working for many years past of the joint system of conciliation and arbitration in the manufactured iron and steel trade of the north of England. The rules of the Board of Conciliation and Arbitration (revised up to January, 1895) declare the object of the Board to be "to arbitrate on wages or any other matters affecting the respective interests of the employers or operatives, and by conciliatory means to interpose its influence to prevent disputes and put an end to any that may arise." Equal representation of the two sides is provided for. All questions are in the first instance referred to a standing committee, except "a general rise or fall of wages, or the selection of an arbitrator to be empowered to fix the same." This excepted question is reserved for the consideration of the whole Board, at which the referee, who is a standing officer of the Board, may be invited to preside: if no agreement be arrived at, a single arbitrator (who may be the referee) is to be appointed, and his decision, at or after a special arbitration held for the purpose, is final and binding on all parties. The extent to which this system has worked may be learned from the fact that, up to the year 1890, the standing committee had arranged more than 850 questions, whilst arbitration had been resorted to in only 18 instances. The fact that such a system has worked to mutual satisfaction and to the exclusion of all strikes and lock-outs for a long series of years, appears to me to speak eloquently in favour of permitting arbitration when conciliation fails, even in the question of the future rates of wages.

One other effort at friendly aid by way of conciliation and arbitration deserves a few words. I mean the establishment, under the auspices of the London Chamber of Commerce, of the London Labour Conciliation and Arbitration Board, in the year 1890. The scheme creates first the London Conciliation Board, and, secondly, separate Trade Conciliation Committees.

The constitution of both Board and committees is designed to give to capital and labour an equal representation. The following extracts from the rules describe the duties of the Board and of the committees respectively :—

“The duties of the London Conciliation Board shall be as follows :—

“(a) To promote amicable methods of settling labour disputes and the prevention of strikes and lock-outs generally, and also especially in the following methods :—

“1. They shall, in the first instance, invite both parties to the dispute to a friendly conference with each other ; offering the rooms of the Chamber of Commerce as a convenient place of meeting. Members of the Board can be present at this conference, or otherwise, at the pleasure of the disputants.

“2. In the event of the disputants not being able to arrive at a settlement between themselves, they shall be invited to lay their respective cases before the Board, with a view to receiving their advice, mediation, or assistance. Or, should the disputants prefer it, the Board would assist them in selecting arbitrators, to whom the questions at issue might be submitted for decision.

“3. The utmost efforts of the Board shall in the mean time and in all cases, be exerted to prevent, if possible, the occurrence or continuance of a strike or lock-out until after all attempts at conciliation shall have been exhausted.

“The London Conciliation Board shall not constitute itself a body of arbitrators except at the express desire of both parties to a dispute, to be signified in writing, but shall in preference, should other methods of conciliation fail, offer to assist the disputants in the



selection of arbitrators chosen either from its own body or otherwise. Any dispute coming before the Board shall, in the first instance, be referred to a Conciliation Committee of the particular trade to which the disputants belong, should such a Committee have been formed and affiliated to the Chamber. . . .

“It shall be the duty of the Trade Conciliation Committees to discuss matters of contention in their respective trades ; to endeavour amicably to arrange the same, and in general to promote the interests of their trade by discussion and mutual agreement. In the event of their not being able to arrange any particular dispute, they will refer the same to the London Conciliation Board, and in the mean time use their most strenuous endeavours to prevent any strike or lock-out until after the London Conciliation Board shall have exhausted all reasonable means of settlement.

“They may from time to time consider and report to the London Conciliation Board upon any matter affecting the interests of their particular trade upon which it may be thought desirable to employ the action or influence of the London Chamber of Commerce as a body.”

In practice, the method which has been found most useful by the London Board has been one not perhaps originally in contemplation. Little progress has been made in the constitution of the separate committees, but the course most in favour has been an application to the Board, and the appointment by them of “a small panel of arbitrators representative of each order from the members of the Board or from outside if necessary, care being taken that they are entirely disinterested in the particular dispute.” A very beneficial part of the labours of the Board has consisted in the settlement of nascent disputes. Something like pride or a fear of showing a supposed sign of weakness was found

often to prevent applications to the Board, and, in consequence they adopted the practice of offering their services whenever they heard of a dispute as pending or as about to commence—services often confined to getting the parties to meet round a table at the Chamber of Commerce, and to settle their own disputes.

The success of the Board appears to be very considerable. Mr. Boulton, speaking towards the end of 1892, said that a week rarely passed without some communication being made to the Board, and that in nine cases out of ten, when the parties got together, an agreement was come to, either by the parties alone or by the help of the Board. Between 1890, when the Board came into operation, and the end of 1897, eleven voluntary agreements had been effected by conciliation, and eleven awards had been made which were more or less permanent settlements of matters in dispute.

To me it appears that more is to be hoped for from an extension of the system of domestic tribunals—from Boards of Conciliation and Arbitration adopted by the parties themselves—than from statutory bodies; that more is to be hoped for from active steps taken for the prevention of strife than from attempts to quench it when it has arisen.\*

EDW. FRY.

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\* Much useful information on the history of industrial conciliation and arbitration—and the subject is now a large one—may be found in Mr. Henry Crompton's *Industrial Conciliation* (London, 1876); and in *Industrial Arbitration and Conciliation*, compiled by Josephine S. Lowell (New York, 1893).—E. F.

## II.—LOCAL GOVERNMENT IN ENGLAND AND IRELAND.

**L**OCAL self-government, as distinguished from government by the central authority, has always existed in England ; but not till recently in the form in which we now know it. The development of our present system has been gradual, and may be said to have commenced with the passing of the Municipal Corporations Act in 1835. Previously to that time many of the larger towns—notably the city of London—as well as many insignificant villages, possessed the right of regulating their own internal affairs. This right, in the first instance, probably had grown up by usage founded on convenience, and was subsequently confirmed by charters which at some time or other had been granted by the sovereign. The terms of these charters varied greatly, and so consequently did the powers enjoyed by the governing bodies of different corporate towns.

Originally the freemen in a borough probably comprised the great mass of the inhabitants or householders. But in course of time, in most towns, the privileges conferred by the charters had come to be exercised by a small number of persons, who usurped the name of corporation, and themselves enjoyed the powers and property originally intended for the general benefit. The anomalies and abuses which thus had gradually become developed, at length attracted attention, and in July, 1834, a Royal Commission was appointed to inquire into the state of the municipal corporations in England and Wales, and to collect information respecting the defects of their constitution. The Commissioners presented a voluminous Report early in 1835. They found that there were then in existence in England and Wales 246 corporations possessing or exercising municipal

functions; that the constitution of the different governing bodies varied greatly; and that most of those bodies were corrupt, and neglected the interests of the towns over which they ruled—for the sake of furthering their own private ends. An oligarchy which had obtained possession of governing powers, had a tendency to perpetuate itself by usually filling vacancies on the ruling body from relations or friends of the existing members. The Report with reference to the city of Coventry may be taken as typical of many other corporations.

"A permanent and self-constituted body—powerful from their position and the possession of magisterial authority—influential from the considerable revenues over which they exercise an irresponsible control, and from the distribution of extensive charities which they assume a right to dispense as a matter of personal patronage; presiding over a commercial city subject to the influence of no individual patron, it became the leading object of the corporation to secure to themselves the nomination of the members of Parliament for the city." . . . "To the attainment of this object all the functions of the corporate authority have been rendered subordinate. manifold and serious abuses have been the necessary result. All the offices of municipal government have been exclusively confined to one party, by no means in the majority of instances comprehending the highest order of citizens, either as regards station or intelligence. And from the same causes have proceeded—unfair practices in the admission to corporate rights; partiality in the administration of justice, and inefficiency in the protection of the public peace; undue application of the corporate revenues to party purposes, and a partial and corrupt distribution of charitable funds—operating, on the one hand, to create an immoral influence over the poorer freemen, and on the other, to exclude from a participation in common benefits the more honest and independent, who even in poverty were unwilling to

sacrifice public principle to considerations of private advantage."

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"It is a remarkable fact that the select body has been composed pretty equally of Whigs and Tories, and candidates of both parties have been alike supported by the corporation as a body. Thus the local politics have by no means quadrated with the national, and the prevailing distinction has been, not between the supporters of the different parties in the State, but between the corporation and the anti-corporation party—corporation and anti-corporation candidates."

Similar reports were made with reference to many other corporate towns; and showed that for the inhabitants generally the benefits intended by their original charters had ceased; individuals, comparatively few in number, were frequently misusing privileges granted for the common benefit. The Reports of the Commissioners produced the Municipal Corporations Act, 1835, which defined the lines on which the whole framework of municipal government has since been elaborated.

This Act (5 & 6 Wm. IV. c. 76) repealed so much of all previously existing Acts, usages, and charters as should be found to be inconsistent with its provisions, and for the first time provided a uniform system of local government for all the corporate boroughs included within its scope. The management of each town was vested in a council, consisting of (a) councillors elected by the burgesses, who for the future were to be persons occupying property and paying rates within the borough; and (b) a mayor, and (c) aldermen elected by the councillors. The council were to appoint a town clerk and treasurer, who might not be members of the council, and such other officers as they deemed necessary. They also might petition for the appointment of a recorder and stipendiary magistrate or magistrates; but the actual appointment of those officers rested with the Crown. Important

functions, such as police and lighting, could be undertaken by the council, and they were also declared to be the trustees for executing the powers and provisions of Acts of Parliament affecting their borough. The income derived from any property belonging to the borough and all payments on the public account, were directed to be paid into a fund called the Borough Fund, out of which all necessary expenses were to be defrayed ; and the council were empowered to make rates for the purpose of meeting any deficiency. The councillors held office for a term of three years, the aldermen for six, and the mayor was elected annually. The terms for which officers were appointed varied ; but in practice they usually continued in office as long as their conduct was satisfactory.

No general provision for the government of any place not incorporated as a borough was made for some time longer ; but many localities obtained powers for managing specific matters for themselves, under private Acts of Parliament. In 1847 a general Act was passed regulating the election and proceedings of the commissioners, to whom the execution of the powers conferred by such Acts should thenceforth be entrusted ; and this Act may be looked on as the model on which the constitution of many local governing bodies was afterwards elaborated. Many districts with a growing urban population also obtained an elected governing body under the Public Health Act, which was passed in the next year (1848). The powers conferred by this Act were mainly powers for preserving and improving the health of the inhabitants, and were in boroughs exercised by the council. But from the year 1848, every populous district might have an elective governing body, by which some portion at any rate of its local affairs was administered, theoretically at all events, in accordance with the wishes of the electors. This Act was from time to time extended and amended ; the districts which had their own governing body became

more numerous, and the powers possessed by such bodies became more ample. But no further change of constitutional importance need be noticed till the year 1872. In that year the whole of England and Wales, outside the metropolis, was divided into sanitary districts, urban or rural, each under the control of an elective governing body. This body in urban districts might be either (*a*) the council of a borough; or (*b*) improvement commissioners; or (*c*) a board of health. In rural districts it consisted of the guardians elected to look after the administration of the poor laws, who now had entirely new functions imposed upon them. The members of these various governing bodies were required to have a property qualification; the electorate was restricted to owners or occupiers of property; and their voting power varied according to the amount at which they were rated. Justices of the peace were *ex-officio* guardians of the poor, and so might become members of the rural sanitary authority without being elected. The votes, except in the case of municipal boroughs, all required a property qualification of some kind; but the nature of this qualification, and the number of votes which a voter could give, varied. The persons to be elected also were obliged to own property or pay rates, it being considered that those who administered public funds ought to have a personal interest in their good management.

The powers exerciseable by these various bodies differed greatly; and in many cases there were several elective bodies discharging administrative functions within the same district, independently of each other. The areas controlled by these different bodies were seldom conterminous. For instance, a poor-law union frequently extended over portions of two or more counties—a sanitary district might comprise portions of two or more unions, and a highway district might overlap the boundaries of all. This division of powers and confusion of boundaries naturally led to friction between the various

elective governing bodies, and to waste of public funds administered by them. But, on the whole, the country was managed in accordance with the views of the ratepayers who were the electors.

In 1888 local self-government was extended to the counties. Previously their affairs had been managed, with admitted efficiency and economy, by the justices in quarter sessions. But in that year their administrative powers were nearly all transferred to newly-constituted county councils, elected in the same manner as the councils of municipal boroughs, by the local government electors, that is practically by the occupiers, male or female, of rated premises. The persons qualified for election are the electors and owners of property in the county. No property qualification is required for county electors or county councillors; but the electors are left free to choose any one of their body in whom they have confidence. Women, however, are not eligible. Following the precedent of the Municipal Corporation Act, the councillors are elected for a term of three years, and themselves elect aldermen, who hold office for six years, and thus will presumably maintain the traditions of the council, and give a continuity to its proceedings. The chairman is elected annually by the members of the council, from among themselves or from persons qualified for election to the council. Besides the powers of justices in quarter sessions, county councils have considerable powers for controlling inferior administrative bodies within their counties, and have had conferred upon them certain functions previously discharged by departments of the central government, such as those of the Local Government Board, the Board of Trade, and the Privy Council. These departments, however, as a rule, still retain the power to exercise these functions in cases where the county councils neglect or decline to use their powers.

Large towns with a population exceeding fifty thousand are



county boroughs, their corporations, in addition to their municipal powers, have all the powers of a county council, and are subject to no control from the council of the county in which they are situated ; but of course they are subject to the central government.

The county councils, during the ten years in which they have existed in England, have generally attended to their legitimate work and discharged their duties satisfactorily. But undoubtedly they spend more money than did their predecessors, the justices in quarter sessions. The public, however, approves of these elective bodies, and their powers and importance will undoubtedly be increased rather than diminished in the future, especially by the delegation of further powers now entrusted to Government departments.

The system of elective bodies to control local affairs was completed in 1894, by the Local Government (Parish and District Councils) Act of that year. It dealt with two distinct matters. The parish, though the oldest local unit known to our constitution, had not hitherto been endowed, *eo nomine*, with any specific machinery for the management of its local affairs. Parishes vary greatly in size and in individual requirements ; and it had been thought that no general form of government suited to all could be devised. Parliament, however, undertook the task ; and now each rural administrative parish is under the control, if its population is large, of an elected parish council ; if small, of a parish meeting, or of a committee appointed by such meeting. The matters confided to the parish council or meeting are carefully limited and enumerated ; and their powers of spending the ratepayers' money are confined within narrow bounds.

The Act also effected several important changes in the government of the larger sanitary districts. The various governing bodies which had previously ruled them were abolished ; and, in their place, urban and rural "district

councils" were established for all places not included within the limits of a municipal borough. The councils of those boroughs remained unaltered; and the election and constitution of the new district councils was assimilated to that already existing in boroughs and counties. Property qualifications were abolished, election in all cases is now by ballot, and the *ex-officio* members have ceased to have seats on any of these elective bodies. In district councils there are no aldermen, but the councillors are elected direct. They choose their own chairman annually.

Both the Act of 1888 and that of 1894 give large powers for correcting the anomaly and inconvenience caused by the boundaries of districts overlapping; and the latter Act contains an express provision that each sanitary district and poor-law union is to be in one county only. All district councils also are now, as urban sanitary authorities were previously, the highway authorities for their respective districts. The district council has, therefore, become in all cases a body discharging important functions, sufficient to attract the services of good men as its members. Such men are, in fact, usually found to be willing to serve.

The system of elective governing bodies, consisting of county, district, and parish councils, each with distinct functions and powers of levying rates, may now be considered complete. Further powers may in the future be conferred on some of these bodies; and it may become necessary to limit their spending powers, as is now the case with parish councils. But the framework may be considered as settled; and does provide fairly well for the administration of local affairs by persons acquainted with the wants of the particular locality, without interfering with the management of larger matters by Parliament.

In Ireland the growth of local representative institutions has been slower than in England. And it cannot be said that hitherto such bodies as have been entrusted with governing

powers have always discharged their duties satisfactorily. Following the example of England, an Act for regulating municipal corporations was passed in 1840 (3 & 4 Vict. c. 108) ; and the larger towns became corporate boroughs with the functions prescribed by the Act, similar in most respects to those previously conferred in England. Smaller towns were placed under the charge of elective governing bodies termed commissioners, whose powers were defined by an Act passed in 1854 (17 & 18 Vict. c. 103). General provision for sanitary administration was not made till 1878, when a comprehensive Public Health Act, in the main copying the provisions of the English Act of 1875, was passed. Under it the guardians in rural unions were constituted a sanitary authority, and invested with functions hitherto unknown in rural districts ; and the corporations of municipal boroughs, and town commissioners in other urban districts, were constituted the urban sanitary authorities.

The parish never was thought of as a possible administrative unit. But, owing partly to the fact that important towns are much less numerous than in England, the chief division for administrative purposes has always been the county. As in England, representative governing bodies were established in smaller but more populous districts long before they were thought necessary for the counties. The functions discharged in England by the magistrates assembled in quarter sessions—and others besides—were discharged in Ireland by the grand jury at the assizes. Magistrates are appointed by the Crown, and form a numerous body in any county. Till recently they were usually men of some position, and as they held their office for life, the general body assembled in quarter sessions in England formed a permanent committee composed of the leading men in the county, and representing the interests of the ratepayers. A grand jury is a much smaller body, not exceeding twenty-three in number, and had not necessarily the qualification of permanence.

The grand jurors were summoned, or invited, to attend by the high sheriff, who of course only held his office for a year, and who might if he chose select different persons from those who had served as grand jurors previously. As a fact, the leading magistrates in most counties were usually willing and anxious to serve on the grand juries in Ireland, and those bodies were as a rule composed of pretty much the same set of men, who had experience in the transaction of county business, and managed it efficiently and economically. But they were only summoned for one assize, and thus discharged their duties as nominees of the high sheriff, and not in any sense as representing any one. Such a system of government was theoretically indefensible, and would never have survived till modern times, if it had not in practice been found to work well. As it is, many people are inclined to compare the administration of the irresponsible grand juries with that of the elected bodies, such as town commissioners and boards of guardians, with results unfavourable to the latter, and to predict anything but a satisfactory future for the new elective bodies which are to supersede the grand juries.

The Local Government Act, which has this year received the royal assent (61 & 62 Vict. c. 37), establishes two new sets of elective governing bodies for Ireland—county councils and subordinate district councils, urban and rural. Six large towns, as in England, are constituted county boroughs; and their corporations will have all the powers of a county council, in addition to the municipal powers of which they are already possessed. Though in a way they form an exception to the general scheme by which the district councils are subordinate to the council of the county within which the district is comprised, they have no powers not possessed elsewhere by one council or the other; and do not really spoil the theoretical symmetry.

It may be convenient to deal briefly with the constitution of

the district councils before considering that for the counties. Every county district must be comprised within the bounds of one county, and will be under the management of its own district council. The district councils are formed much on the model of those already in existence in England. The electorate for both county and district councils is composed of the local government electors, that is, practically of the ratepaying occupiers of Ireland, male or female. No one is qualified for election as a councillor unless he or she is a local government elector for his district, or resident within it. Ministers of religion are not eligible. But with that exception any elector may be elected a councillor. Districts are divided, as in England, into urban and rural. The functions of their councils are not identical, urban councils possessing more ample powers than are given to the rural.

All existing urban sanitary authorities become urban district councils, and are to be elected by ballot by the local government electors, who alone are henceforward to be the burgesses in boroughs. Aldermen there will continue to exist, but their election for the future must be in accordance with the provisions of the new Act. Councillors are to be elected either for the whole district, or for a ward, as the case may be; and their number and duration of office is to remain the same as that of the body they succeed. The councillors for a rural district are to represent existing poor-law electoral divisions, as a rule, two for each division, are to hold office for a term of three years, and then retire together. They are also to be the poor-law guardians for the division for which they are elected; which is not the case with urban councillors. A rural district council may adopt three additional councillors from among the persons qualified to be councillors. Both urban and rural councils are to elect their chairmen annually. The chairman of a rural district council is *ex officio* a member of the county council; and if the district, whether urban or rural, contains a population

exceeding 5000, and is not a borough having a separate commission of the peace, he is a magistrate for the county, unless a woman or otherwise personally disqualified. Where a borough has a separate commission of the peace, the mayor has long been a magistrate for the borough, and still remains one as in England.

The powers of district councils are those already possessed by urban and rural sanitary authorities under the Irish Public Health Acts, the Town Improvement Acts, and other Acts which conferred limited powers of local government. To these, others, which are by no means unimportant, are now added. Urban councils have transferred to them public works, the expense of the maintenance of which is not leviable off the county at large. They have also imposed upon them the duty of making, levying, and collecting the poor-rate within their district; they are constituted the burial board, and are empowered to acquire rights of holding fairs and markets, and further, are given large powers for acquiring land or easements over land for the purpose of discharging any functions belonging to them. District councils, urban and rural alike, are made the authority for dealing with epidemics and outbreaks of infectious diseases. The business of baronial presentment sessions—a body not analogous to any existing in England, and having distinct powers subordinate to those of the grand jury—is transferred to all district councils. Urban councils also obtain the powers of the grand jury in relation to public works, not maintained by the county at large, situated within their district.

The maintenance and care of highways generally, has hitherto been, in Ireland, a matter controlled by the county, and it remains so still. An urban council may, however, undertake the entire maintenance of any road in its district, on such terms as may be agreed upon, or as, in default of agreement between the district and county councils, may be fixed by an order of the Local Government Board.

The poor-law unions remain for the purpose of administering the poor law only. Their boundaries, as was formerly the case in England, frequently extend into portions of several counties. This arrangement is not to be altered everywhere. But the new Act provides that "a union shall not, if it is conveniently possible to avoid it, be divided between more than two counties, and shall not, in any case, be divided between more than three counties." The Local Government Board possesses already large powers for rearranging boundaries. Portions of a union in different counties are now to be formed into separate county districts. The district councillors for a rural district are, as already stated, to be the guardians for their respective electoral divisions. Where an urban district is included in a union, guardians for each electoral division therein are to be separately elected. There are no longer to be any *ex-officio* guardians; but the rural district councillors and urban elected guardians are to be the guardians to transact the poor-law business of the union. The power of making rates is taken from the guardians, who for the future are to send in an estimate of the amount they will require, and receive the money from the county council.

County councils have transferred to them the administrative functions of the grand juries, except such as are conferred on urban district councils. The powers hitherto discharged by grand juries in Ireland may be divided into three heads—administrative, judicial, and those appertaining to the trial of criminals. Of these, the administrative are now transferred to the county councils, the judicial to the county courts, and the finding of indictments, and other business of a grand jury relating to crime, will continue to be discharged by grand juries as hitherto. The administrative duties so transferred are multifarious, comprised in a large number of statutes, and will require much care and attention on the part of those called on to administer them.

Besides these, the law is now in some respects altered, and the county councils are to attend to certain matters with which grand juries had nothing to do. Foremost among these may be reckoned the making, levying, collecting, and recovering rates in all parts of the county not comprised in an urban district. Accounts are to be kept so as to distinguish between charges payable by a particular union or district, and by the county at large, and rates are to be made for each district sufficient to raise the sums due from it and its quota of county expenses. All rates are henceforward to be paid by the occupier. The county councils are further to be the authority to superintend technical instruction. They are to have the charge of the county lunatic asylums, in place of the asylums boards, which have hitherto been nominated for that duty, and are to maintain the county infirmaries and hospitals where such exist.

Most public roads at present in Ireland are maintained wholly or in part at the expense of the county. Such roads are denominated main roads in the new Act, and are for the future to be maintained by the county councils at the joint expense of the county generally, and of the district in which they are situate. The county council can, however, declare a road not to be a main road, and so put the whole charges for its maintenance on the district. In such cases the district council can appeal to the Local Government Board, who will decide whether the road is to be treated as a main road or not. County councils may also acquire the control of any marine works, and may be given the powers of existing drainage boards. They, jointly with the Commissioners of Works, are authorized to prosecute persons who may damage any ancient monument. They also may, in case of emergency, order the repair of any public work, vested in themselves or in a rural district council.

County councils may acquire, purchase, take on lease, or exchange any land, or easements or rights over or in land,



including rights of water, and may acquire such buildings and offices as they require, and have facilities for acquiring land compulsorily, with the sanction of the Judge of Assize, subject to appeal to the Privy Council. As in England, they may institute or defend legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their county, and may oppose Bills in Parliament, but may not promote them. They will also have the same powers as the council of a municipal corporation have, to make by-laws in relation to their county, or any specified part or parts thereof. An entirely new power, hitherto not possessed by any one, is given for dealing with cases of exceptional distress. A county council may apply to the Local Government Board to relax the ordinary rules, and sanction the grant of outdoor relief for a limited period; but the power of deciding whether relief may be so given, rests with the Board and not with the councils, who can only suggest this relaxation of the ordinary law. The appointment of coroners, as in England, is transferred from the electors to the county councils; and they will, of course, appoint their own officers for the future.

An important power now possessed by county councils in England, is not given to those in Ireland—the management of the police. This arises from the different state of affairs previously existing. In England the only officials who exercised police functions, prior to the reign of the present sovereign, were parish constables and the watchmen appointed in a few towns. Early in her Majesty's reign, powers were given for the appointment of county constabulary, and the control of the new force was given to the justices in quarter sessions, who were then the recognized county authority. When county councils were established in England, it was thought that the management of the large police forces then in existence could not be entrusted to the new bodies just coming into existence, without some safeguards; and

accordingly the control was given to a joint committee appointed partly by the justices and partly by the county council. The expense is defrayed partly by the ratepayers and partly out of the Consolidated Fund. In Ireland the constabulary was established, not so much for detecting crime as to maintain order throughout the country. The expense is paid out of the Consolidated Fund, and the force, like the police of the metropolis, has always been controlled by the central government and not by the county authority. The grand jury had no administrative powers as regards the constabulary, and consequently the county councils succeed to none. At present, at any rate, such matters are not likely to be put under their control.

It is, of course, intended that there shall be no violent dislocation, but that the system of administration hitherto in operation shall be continued, though under the control of elected representatives in the place of irresponsible nominees. The existing county officials appointed by the grand juries are to continue to discharge their functions as officials of the new county councils. It is also to be hoped that a fair proportion of those who have in the past done good work as grand jurors will be elected on the new councils, and thus be able to give their counties the benefit of their experience. In England, when county councils were first established, ten years ago, it was found that men, who had experience and had done good administrative work as magistrates at quarter sessions, were generally elected on the county councils. Such men have shaped and guided the action of the county councils, and have contributed largely to render them the business-like administrative bodies which they admittedly are. Whether men of a similar position will be elected to the county councils in Ireland, in sufficient numbers to be able to influence their course of action, time alone can show. The grand jury in every county can appoint three persons, who have served as grand jurors, to be additional members of the

first council for their county, and every county council may hereafter co-opt one or two persons, qualified to be councillors, as additional members. All rural district councils in a county are also to be represented on the county council by their chairman, or, if he cannot take the place, by some other member assigned by them for the purpose. There are no aldermen, so with these few exceptions all the councillors will be directly elected.

The total number of additional councillors can never be large enough to exercise a controlling influence over a county council, and its policy will necessarily be determined in the main by the votes of the elected members. If they allow themselves to be influenced by considerations other than those of the interest of their locality, the result will be disastrous. Some persons of extreme views, who pretend to represent public opinion in Ireland, have avowed that they look on the new governing bodies now called into existence, as merely a means to help on their ideal of securing the separation of Ireland from England. If the councils should be actuated by such views, and, copying the example of some existing elective bodies, should neglect their legitimate work of administration in order to further their political aims, they will justify the criticisms of those who say that Irishmen are incapable of managing their own affairs in a business-like way, and will do much to render the realization of their own aspirations impossible. But if, as those who have passed the new Act anticipate, the majority of those elected on the councils set themselves to the discharge of their legitimate functions, and show that they can and will administer the affairs of their counties as intelligently and as honestly as the grand jurors whom they supersede, the experiment of extending Home Rule to Ireland, in the true interpretation of the term, will be proved a success. The new Act goes far to satisfy all legitimate wishes for the management of local affairs by the people chiefly interested. If those who have

to administer it show themselves determined to use it to the best advantage, any defects which may become apparent will doubtless in due time be remedied by Parliament.

J. V. VESEY FITZ-GERALD.

### III.—"ACTIO PERSONALIS MORITUR CUM PERSONÂ" AS APPLIED TO NEGLIGENCE.

WHEN, through the negligence of a Railway Company, a passenger sustains personal injuries, and after a short interval dies without having received any compensation, can his executor recover against the company the medical expenses incurred, and the pecuniary loss sustained by the testator in consequence of such injuries? In *Bradshaw v. Lancashire and Yorkshire Railway Company* (L.R. 10 C.P. 189), this question was decided by Grove and Denman, JJ., in the affirmative. And accordingly the plaintiff in that case was allowed to retain a verdict for £200, of which £40 represented expenses incurred by the deceased for medical attendance, and £160 the loss occasioned to his estate owing to his having been prevented by the accident from attending to his business. This case was decided in the year 1875. In the following year the decision was questioned by Mellor and Quain, JJ., in *Leggott v. Great Northern Railway Company* (L.R. 1 Q.B.D. 599); but, as they formed only a court of co-ordinate jurisdiction, it was not competent for them to overrule it. In the latter case the plaintiff's husband had received injuries, from which he, after an interval, died. His widow, thereupon, as administratrix, brought an action under Lord Campbell's Act [9 & 10 Vict. c. 93], in which a verdict was, by consent, entered for £500. She then, as administratrix, brought a second action against the company, to recover damages in respect of the diminution of her husband's

personal estate during his lifetime, owing to his inability to attend to business after the accident. On demurrer it was held that the former action under Lord Campbell's Act did not operate as an estoppel, and that, according to the decision in *Bradshaw v. Lancashire and Yorkshire Railway Company* (L.R. 10 C.P. 189), the maxim, *Actio personalis moritur cum persona*, did not apply.

Recently, in 1892, a similar case came before the Irish Court of Appeal—*Daly v. Dublin, Wicklow, and Wexford Railway Company* (30 L.R. Ir. 514)—in which *Bradshaw v. Lancashire and Yorkshire Railway Company* (L.R. 10 C.P. 189), was also followed.

But it is submitted that both principle and authority are against the rule laid down in these cases.

It is clear that, independently of Lord Campbell's Act, no new, separate, and distinct cause of action arises in such circumstances by reason of the subsequent death of the person injured, because negligence causing damage is the gist of the action, and no new development of the damage can create a fresh cause of action. Thus, in the case of *Read v. Great Eastern Railway Company* (L.R. 3 Q.B. 555), an action was brought under Lord Campbell's Act by the widow of a man who had died in consequence of injuries sustained through the defendant's negligence. There was a plea of payment and satisfaction in the lifetime of the deceased. On demurrer it was held that the cause of action was the defendant's negligence, and that the death of the plaintiff's husband did not create a fresh cause of action; and accordingly the plaintiff could not recover. [See also *Griffith v. Dudley* (L.R. 9 Q.B.D. 357), and *Haigh v. Royal Mail, etc., Company* (52 L.J. Q.B. 640).] And in a recent case from Canada—*Robinson v. Canadian Pacific Railway Company*, [1892] (A.C. 481)—Lord Watson, in delivering the judgment of the Privy Council, says (see p. 486): "The Code became law in the year 1866, and section 1056 superseded the

provisions of chapter 78 of the Consolidated Statutes of the then Province of Canada (1859), which, though not identical in expression, were the same in substance with the enactments of the English statute 9 & 10 Vict. c. 93, commonly known as Lord Campbell's Act. In both statutes a right of action is given, in general terms, to the representative of the deceased, for behoof of his widow and other relations entitled, in all cases where an act or default is such as would, if death had not ensued, have entitled the party injured to maintain an action. Their provisions leave indefinite some things which in the code are defined. They leave to implication the conditions upon which the right is not to survive, and by that omission, favour the suggestion that what was intended to pass to the representative was *such right of action as the deceased had at the time of his decease.*"

To give a complete cause of action, however, in such a case there must be *damnum et injuria*. Mere negligence could not give a right of action unless damage were caused thereby or resulted therefrom. [See *Broom's Comm.*, 6th ed., p. 101; Cf. *Holmes v. Mather* (L.R. 10 Ex. 261).]

To an ordinary action of tort for personal injuries resulting from negligence it is admitted that the maxim, *Actio personalis moritur cum persona*, applies. Thus, in *Pulling v. Great Eastern Railway Company* (L.R. 9 Q.B.D. 110), which was an action of tort by the widow, as executrix, of a man who had been injured at a level crossing on the defendants' railway by a passing train, and subsequently died without having recovered any compensation, the plaintiff claimed damages for injury to the personal estate of the deceased by reason of his having incurred medical expenses in endeavouring to effect a cure of his injuries. But it was held that, as the damage arose from tortious injury to the intestate's person, the maxim applied, and the action could not be maintained. And similarly in *London v. London Road Car Company* (4 Times L.R. 448)—also an action for personal

injuries caused by the defendants' negligence. The injured party, after having commenced his action, died before it came to trial. His administratrix thereupon applied for liberty to continue the action, in order to recover the medical expenses which had been incurred by the plaintiff owing to the accident. This was, however, refused, the Court (Lord Coleridge, C.J., and Mathew, J.) holding that the entire cause of action was gone.

Is the maxim, then, any the less applicable to a case in which the injured person, having been a passenger at the time of the occurrence, relies on an implied contract that all due care shall be taken to carry him safely? No valid distinction can, it is submitted, be maintained between an action in such form, and an action in respect of the breach of duty in not using due care; for, whatever be the form of the declaration, the action must always be, in substance, one of tort—an action *ex delicto*, even though founded, in some degree, on contract.

Although the action is often stated in the form of assumpsit, the more regular form of stating it is, as depending on the common-law obligation to carry with reasonable care. [See *Ansell v. Waterhouse* (6 M. & S. 385); and *Marshall v. York, Newcastle, and Berwick Railway Company* (11 C.B. 655).] "It seems to me," says Williams, J., in the latter case, at p. 663, "that the whole current of authorities, beginning with *Govett v. Radnidge* and ending with *Pozzi v. Shipton*, establishes that an action of this sort is, in substance, not an action of contract, but an action of tort against the company as carriers." *Marshall v. York, Newcastle, and Berwick Railway Company* (*supra*) was an action for the loss of a passenger's luggage, but the observations of Williams, J., apply *a fortiori* to a case of personal injuries, because of the broad distinction which lies between actions in respect of the carriage of goods and those in respect of the carriage of passengers. In the former case the law makes the carrier an insurer (*Riley v. Horne* (5

Bing. 217)) ; but in the latter case the carrier's liability rests upon the absence of due care to carry the passenger safely ; in other words, negligence is the gist of this action (*Redhead v. Midland Railway Company* (L.R. 2 Q.B. 412 ; L.R. 4 Q.B. 379)). "Where," says Littledale, J., in *Burnett v. Lynch* (5 B. & C.), at p. 609, "there is an express promise, and a legal obligation results from it, then the plaintiff's cause of action is most accurately described in assumpsit, in which the promise is stated as the gist of the action. But where, from a given state of facts, the law raises a legal obligation to do a particular act, and there is a breach of that obligation and a consequential damage, then, although assumpsit may be maintainable upon a promise implied by law to do the act, still an action on the case founded in tort is the more proper form of action."

Again, in *Howell v. Young* (5 B. & C. 266), a case subsequently referred to in *Smith v. Fox* (12 Jur. 130), and there stated to be good law, Bayley, J., says: "It appears to me that there is not any substantial distinction between an action of assumpsit founded upon a promise, which the law implies, that a person will do that which he is legally liable to perform, and an action on the case which is founded expressly upon a breach of duty. Whatever be the form of action, the breach of duty is substantially the cause of action." And in the same case Holroyd, J., says: "The cause of action is the misconduct or negligence of the attorney. The Statute of Limitations is a bar to the original cause of action and to all the consequential damages resulting from it, unless, indeed, it can be shown that the damages, or any part of them, constitute a new cause of action which accrued within six years. I think it makes no difference in this respect whether the plaintiff elects to bring an action of assumpsit founded upon a breach of promise, or a special action on the case founded on a breach of duty. The breach of promise, or of duty, took place as soon as the defendant took an insufficient



security. 'Whether the plaintiff, therefore, elect to sue in one form of action or another, *the cause of action, which in either form is substantially the same*, accrued at the same moment of time. The breach of duty, therefore, constituting a cause of action, it follows that the Statute of Limitations is a bar to this action, unless the special damage alleged in the declaration constitute a new cause of action."

The mere form of the pleadings, therefore, cannot alone determine the rights or liabilities of the parties to an action; but, for this purpose, the substantial cause of action must be considered.\*

The right of an executor to recover does not, however, depend upon the distinction between contract and tort, but upon whether the action be a *personal* action, or one relating to property. *Personal* actions are for the recovery of a debt, or damages for the breach of a contract, or a specific personal chattel, or a satisfaction in damages for some injury to the person, personal, or real property (see *Chitty's Pleading*, 7th ed. vol. i. p. 109). "Formerly," says Lord Esher, M.R., in *Finlay v. Chirney* (L.R. 20 Q.B.D. 494) (see p. 498), "an action of tort was almost inevitably a personal action; but it did not follow necessarily that an action was not personal because it was founded on a breach of contract." Personal actions are in form *ex contractu* or *ex delicto*, or, in other words, are for breach of contract, or for *wrongs* unconnected with contract (*Chitty's Pleadings*, 7th ed. vol. i. p. 109).

In actions arising out of the negligence of carriers of passengers, the right of the executor to sue depends entirely upon the statute 4th Edward III. c. 7. [See per Quain, J., in *Leggott v. Great Northern Railway Company* (L.R. 1 Q.B.D.

\* Cf. *O'Sullivan v. Dublin, Wicklow, and Wexford Railway Company* (Ir. R. 2 C.L. 124); *Pontifex v. Midland Railway Company* (L.R. 3 Q.B.D. 23); *Fleming v. Manchester, Sheffield, and Lincolnshire Railway Company* (L.R. 4 Q.B.D. 81); *Taylor v. Manchester, Sheffield, and Lincolnshire Railway* [1895] (1 Q.B. 134); *Kelly v. Metropolitan Railway* [1895] (Q.B. 944).

599, 606).] By this statute, which recites that "in times past executors have not had actions for a trespass done to their testators, as of the goods and chattels of the same testators carried away in their lifetime," it is enacted "that the executors in such cases shall have an action against the trespassers, in like manner as they whose executors they are should have had if they were living."

"The true test," says Lord Esher, M.R., in *Finlay v. Chirney* (L.R. 20 Q.B.D. 494) (see p. 499), "is whether the cause of action itself is one which affects property." And in that case it was held that an action for breach of promise of marriage would not lie against the executor of the promisor, there being no special damage alleged and proved. [And see *Chamberlain v. Williamson* (2 M. & S. 408).]

The special damage which would support such an action must also have been in the contemplation of the parties at the time the contract was entered into. [*Hadley v. Baxendale* (9 Ex. 341); *Finlay v. Chirney* (L.R. 20 Q.B.D. 494).]

The term "*special damage*," which has been found for centuries in the books, is not always used with reference to similar subject-matter, nor in the same context. At times (both in the law of tort and of contract) it is employed to denote that damage arising out of the special circumstances of the case, which, if properly pleaded, may be superadded to the general damage which the law implies in every breach of contract, and every infringement of an absolute right. In all such cases the law presumes that *some* damage will flow, in the ordinary course of things, from the mere invasion of the plaintiff's rights, and calls it general damage. Special damage, in such a context, means the particular damage (beyond the general damage) which results from the particular circumstances of the case, and of the plaintiff's claim to be compensated for which he ought to give warning in his pleadings in order that there may be no surprise at the trial. But where no actual and positive right (apart from

the damage done) has been disturbed, it is the damage done that is the wrong; and the expression "special damage," when used of this damage, denotes the actual and temporal loss, which has, in fact, occurred. Such damage is called variously in old authorities — "express loss," "particular damage," "damage in fact," "special or particular cause of loss." [See *Ratcliffe v. Evans* [1892] (2 Q.B. 524).]

The real question, therefore, is, could the injured passenger himself maintain two actions, in one of which his claim for damages would be confined to the purely personal injury and inconvenience, and, in the other, to the actual outlay and loss of income?

Are the medical expenses and pecuniary loss part of the ordinary damage, which the law implies as being a natural and reasonable result of the defendants' negligence, or are they *special* damage in the sense necessary to support an action by the executor—*i.e.* the substantial and primary cause of action? To answer this question it is only necessary to see whether they are included in the *general* damages recoverable in actions of negligence involving personal injuries; because, if so, they are at once taken out of the category of special damage. The universal practice has been for the judge to direct the jury to take into account, in assessing the general damages, the expense which the plaintiff has been put to, and the pecuniary loss which he has incurred in consequence of his injuries; and this practice has received the assent and approbation of the Court of Appeal in the case of *Phillips v. London and South Western Railway Company* (L.R. 4 Q.B.D. 407; 5 Q.B.D. 78; L.R. 5 C.P.D. 281), in which a new trial was demanded on account of the inadequacy of the damages given by the jury. In the Queen's Bench Division, Cockburn, C.J., delivering the judgment of the Court, said: "But we think that a jury cannot be said to take a reasonable view of the case unless they consider and take into account all the heads of damage

in respect of which a plaintiff complaining of a personal injury is entitled to compensation. These are the bodily injury sustained, the pain undergone, the effect on the health of the sufferer according to its degree and its probable duration as likely to be temporary or permanent, *the expenses incidental to attempts to effect a cure or to lessen the amount of injury, the pecuniary loss sustained through inability to attend to a profession or business.*"

On appeal this judgment was affirmed, and James, L.J., adopted as part of his judgment the following passage from the summing up of Field, J., to the jury: "The damages to which a man is entitled are the consequences of the wrongful act by which he suffers. The consequences of the wrongful act here are undoubtedly that Dr. Phillips has been, and is, prevented from earning such a sum of money as you think he would have been likely to earn if this accident had not happened."

The case went to a second trial, and again was taken to the Court of Appeal, differently constituted, when the same principle of compensation was affirmed. Bramwell, L.J., says (see 5 C.P.D., p. 287): "I have tried, as judge, more than a hundred actions of this kind, and the direction which I, in common with other judges, have been accustomed to give the jury has been to the following effect: 'You must give the plaintiff a compensation for his pecuniary loss, you must give him compensation for his pain and bodily suffering; of course it is almost impossible for you to give to an injured man what can be strictly called a compensation; but you must consider under all the circumstances what is a fair amount to be awarded to him.' I have never known a direction in that form to be questioned." [See also *Potter v. Metropolitan Railway Company* (28 L.T. N.S. 735).]

Universal practice, sanctioned by authority, therefore shows that medical expenses and pecuniary loss arising from illness and inability to attend to business are not *special* damage, but

on the contrary, form part of the general damage implied by law in such cases. And, to quote from Lord Bramwell's speech in *Darley Main Colliery Company v. Mitchell* (11 App. Cas. 127): "It is a rule that when a thing directly wrongful in itself is done to a man, in itself a cause of action, he must, if he sues in respect of it, do so once and for all. As, if he is beaten or wounded, if he sues he must sue for all his damage, past, present, and future, certain and contingent. He cannot maintain an action for a broken arm, and subsequently for a broken rib, though he did not know of it when he commenced his first action. But if he sustained two injuries from a blow, one to his person, another to his property, as, for instance, damage to a watch, there is no doubt that he could maintain two actions in respect of the one blow. I may apply the test I mentioned in the argument. If he became bankrupt, the right in respect of the watch would vest in his trustee. That for damage to his person would remain in him. I have put the case of a trespass. The same would be true of an action for consequential damages."

It follows, therefore, that since no fresh cause of action arises by reason of the death of the injured person, the mere fact of the action being brought in the name of the executor can make neither the substance of the action nor the nature of the damages any different from what they would have been if the testator had himself been the plaintiff.

The principle, already adverted to, upon which depends the right of an executor to maintain an action for a wrong suffered by his testator, namely, that the cause of action itself must be one which affects property, is well illustrated by the case of *Wetherell v. Julius* (10 C.B. 267), decided under the Bankruptcy Acts; for the assignees in bankruptcy stand in much the same relation to the bankrupt in this respect as does the executor to his testator. It was there held, that the negligence of the plaintiff's attorneys, in consequence of which judgment was given against the plaintiff for a large sum, and he was

imprisoned in execution for the damages and costs, and put to expense in endeavouring to procure his release, was not a cause of action which would pass to his assignees in insolvency. But, on the other hand, where the same plaintiff, being a beneficed clergyman, through the negligence of his attorneys in permitting a writ of sequestration to remain in force longer than was necessary, lost the profits of his living, it was held that this cause of action did pass to the assignees, because pecuniary loss was there *the substantial and primary cause of action*.

In *Rogers v. Spence* (13 M. & W. 571 ; S.C. 12 Cl. & F. 700), which was an action for trespass and seizing and selling the plaintiff's chattels, the defence being a plea of bankruptcy, it was held on demurrer that the primary personal injury to the bankrupt being the principal and essential cause of action, it did not pass to his assignees.

In *Beckham v. Drake* (11 M. & W. 315), the plaintiff had entered into an agreement with the firm to serve the firm for seven years, and the firm agreed to pay him so long as he should serve faithfully. The plaintiff was, in breach of the agreement, dismissed ; and it was held that the right of action for breach of the agreement passed to the plaintiff's assignees in bankruptcy as being part of his personal estate whereof a profit might be made. An appeal was taken to the House of Lords (see 2 Cl. H. L. Cas. N.S. 579), and the judges having been called in to assist at the hearing, Erle, J., says (see p. 604) : " Thus it has been laid down that the assignees cannot sue for . . . injury to the person by negligence, as by not carrying safely." And again (p. 605) : " Thus, in respect of promise, the assignees of a patient, if bankrupt, could not sue a surgeon for a breach of his promise to use due care in treating a wound, because the damages are assessed by reference to bodily annoyance ; but the assignees of the same surgeon, if bankrupt, might sue the patient on his promise to pay

remuneration for attendance *because the promise relates to property.*" And Cresswell, J., says (see p. 613): "On the one hand, therefore, we have it established, that by the bankrupt laws it was intended that every right vested in the bankrupt, of which profit could be made, including rights of action, should pass to the assignees, and on the other, *that the right to recover a satisfaction in damages for a personal injury is to be excepted out of that general rule.*" And Wightman, J. (see p. 617): "In cases where the personal estate is only affected through some wrong or injury to the person or the feelings of the bankrupt, and the loss or gain to the personal estate would be greater or less according to the compensation given for such injury, whether by breach of contract or otherwise, the right of action would not pass to the assignees." And Maule, J. (see p. 621): "There is no doubt that the right to bring an action for an injury to the person, character, or feelings of a bankrupt, does not pass to the assignees." And Parke, B., says (see p. 625): "The executor cannot sue upon contracts, the breach of which is a mere personal wrong." And again (see p. 626): "Actions for assault, for example, and for defamation, actions on the case for misfeasance, doing damage to the person . . . are not transferred to the assignees, even though some of these causes of action may be followed by a consequential diminution of the personal estate, *as where by reason of a personal injury a man has been put to expense.*" The view of the majority of the judges thus called in to advise, was in accordance with these expressions of opinion, and was confirmed by the House of Lords.

As against these authorities the case of *Potter v. Metropolitan Railway Company* (30 L.T. N.S. 765 ; 32 L.T. N.S. 36) is put forward as an authority for the survival of such an action as we are treating of. But, on examination, this case will be found to rest upon an entirely different footing, depending, as it does, upon the relationship between husband and wife, and the peculiar rights which that relationship gives rise to. The

plaintiff, a married woman, was injured whilst a passenger on the defendants' railway through their negligence. For this injury, her husband and she brought an action in their joint names. During the pendency of this action the husband died. A suggestion of his death was entered on the record, and the action proceeded with in the name of the wife alone. At the trial, the only question of damage inquired into was that accruing to her personally, and for that she recovered a verdict. She, then, as executrix of her husband, brought a second action against the defendants, to recover the amount of damage to the estate of her husband in his lifetime, by reason of the personal injuries suffered by her, his wife. It was held that this second action was maintainable by the plaintiff as executrix of her deceased husband.

Now, what were the causes of action respectively relied on? In the former of these actions the cause of action was the defendants' negligence causing personal injuries to the female plaintiff, and husband and wife had to be joint plaintiffs, because the wife could not at that time sue alone; the husband's name must accordingly be joined with hers for conformity. But, of the second action the gist was the loss to the husband of the comfort and society of his wife; and in this action the husband, had he survived, would have been sole plaintiff. He complained of an injury to, or interference with, those rights of property which the law gave him in the society and assistance of his wife, alleging as special damage the expense to him of restoring her to her former state. Keating, J., likened it to a case of injury to a dog or a horse of the testator; and Quain, J., who in *Leggott v. Great Northern Railway Company* (L.R. 1 Q.B.D. 599), so strongly dissented from the principle laid down in *Bradshaw v. Lancashire and Yorkshire Railway Company* (L.R. 10 C.P. 189), was party to the judgment in Potter's case. It was, therefore, on the ground of direct injury to the testator's property, and not of merely consequential injury to his property flowing from a



personal injury to himself, that the action was held to survive to the executrix. The personal injuries sustained by the wife formed no part of the cause of complaint in the husband's action, because if the wife were merely abducted so that he was deprived of her society, he would equally be entitled to maintain an action on his own behalf against the abductor, whilst, on the other hand, an assault upon the wife which did not end in loss to the plaintiff of the comfort and society of his wife would not support an action by him as sole plaintiff. [See *Norris v. Seed* (3 Exch. 782), and *Young v. Pridd* (Cro. Car. 89).]

So, in *Dengate v. Gardiner* (4 M. & W. 5), which was a case of slanderous words (which were actionable in themselves) spoken of the female plaintiff, it was held that the wife must join, because she was the party slandered, and the husband must join for conformity ; but, as the profit of her wages was entirely his, he alone could sue for the loss of them. "Just as"—says Lord Abinger, C.B., in his judgment in that case—"in trespass by husband and wife for assault on the wife, the surgeon's bill cannot be recovered. The right of action would not survive to her." It would not, he means, survive to her personally, because it never formed part of her cause of action, and must have been recovered in a separate action by the husband alone, but, as shown by Potter's case, it could be recovered by the husband's executor, as special damage affecting his personal estate. So essentially distinct are these separate actions arising out of injuries to a married woman, that prior to the Common Law Procedure Act, 1852, husband and wife could not recover their separate damages in the same action. The 40th section of that Act enables them to do so ; but still an action by husband and wife for injuries to the wife is no bar to a separate action by the husband for loss of service, etc. [See *Brockbank v. Whitehaven Junction Railway Company* (7 H. & N. 834).]

Springing out of the relationship of master and servant

we also find those separate and distinct rights against a wrongdoer. Thus, in *Mary's case* (9 Rep. 143), we find this passage explaining the distinction:—"And, therefore, if my servant is beat, the master shall not have an action for this battery, unless the battery is so great that by reason thereof he loses the service of his servant; but the servant himself for every small battery shall have an action: and the reason of the difference is this, that the master has not any damage by the personal beating of his servant, but by reason of a '*per quod*,' viz. *per quod servitium, etc., amisit*; so that the original act is not the cause of his action; for be the battery greater or less, if the master doth not lose the service of his servant, he shall not have an action."

Those who argue in favour of the survival of such a cause of action as that in *Bradshaw's case*, also rely upon a dictum in *Knight v. Quarles* (2 Brod. & Bing. 102), which is quoted by Willes, J., in *Alton v. Midland Railway Company* (19 C.B. N.S. 213). It is to be observed, however, that this dictum, as appears from the fuller report of *Knight v. Quarles*, in 4 Moo. 532, was not an expression of opinion by the full court, but only of the junior of the four judges constituting the court—Richardson, J. It is as follows: "If a person contracts with a coach proprietor to be safely and securely carried from one place to another, and through the negligence of the servant of such proprietor the coach be overturned, in consequence of which the passenger so contracting dislocates or fractures a limb, and, owing to his confinement in procuring a cure, his personal property sustained an injury, although he, during his lifetime, might sue the proprietor in *assumpsit* or *tort*, still his representative may maintain an action on the contract, after his death, to carry him safely, and recover damages for the injury which had accrued to his estate from the breach thereof." But in the case there put an *express contract* is assumed; and the dictum seems to come to no more than this, that whereas the passenger

himself might at his option either declare upon the express contract without any reference to negligence, or, in the alternative, throw overboard his contract, and rely simply upon the negligence, yet his representative could only bring an action upon the express contract, into which the element of negligence would not enter at all. Such an action might be within the general rule, enabling executors or administrators to sue at common law in respect of a breach of contract committed in the lifetime of a contractee. This was the sense in which Willes, J., understood the dictum; for, after quoting it, he proceeds: "The action was there held to be sustainable *at common law*, because the substance of the matter was contract." And in another part of his judgment in *Alton v. Midland Railway Company* (*supra*), which was an action for the loss of the services of the plaintiff's servant by reason of injuries sustained by him through the negligence of the defendants, Willes, J., says: "This is a case in which there could have been no duty but for the contract to carry safely in consideration of a certain payment. The passenger purchases the duty which the law says arises out of the contract: and he has his election to sue upon the contract, or for the breach of the duty founded on the contract. I will cite one authority for the purpose of illustrating this part of my judgment. I asked, in the course of the argument, if the executor could sue upon such a contract as this, and Mr. Keane said he thought not. I am disposed to think the answer given right: it is probably like a promise of marriage which, not being within the statute 4 Edw. III. c. 7, *moritur cum personâ*. But suppose the personal estate of the servant sustained injury through the defendants' breach of duty, as if he had taken a quantity of luggage with him which had been lost or damaged, it is clear his executor might have sued for that damage."

Upon the grounds, therefore, that (1) it is an action on the case, and not, in substance, one of contract, (2) the cause of

action is not one itself affecting property, and (3) the damages recoverable are not special damage constituting a cause of action, but merely consequential damage following injury to the person, it is submitted that such an action cannot be maintained by an executor.

G. D. KEOGH.

#### IV.—IS THERE A FASHODA QUESTION?

THERE is a peculiarly attractive title of the Civil Law, which deals with the subject of the acquisition of property by occupation. Things which belonged to no one—such were, in the Roman system, precious stones on the sea-shore, wild animals, and the property of enemies—the casual first-comer could appropriate and hold by the valid title of *occupatio*. As, to enjoy the titles and benefits of his position, a king of France had only to take the trouble to be born, so the subject of occupation lay vacant, and the fortunate finder needed only to put forth a willing hand and take it. Oddly enough, although the Roman jurists considered this mode of acquiring property so simple and natural as to entitle it to rank as part of the apparatus of legal conceptions, which was common to the civilized world, it occupies only a very small space in the thoughts of an English jurist. Indeed, so far as real property is concerned, there is hardly any such thing as a title by occupation; and institutional writers are forced to fall back, for an instance of its occurrence, upon the highly special case of an estate granted to A for the life of B. In such circumstances, it was anciently the rule, that if A predeceased B, any person whatever who could get possession of the land, was entitled to retain it until B's death, which was termed obtaining a title by "general occupancy." This kind of title to land, which must have been productive of not a few

undignified scrambles for possession, when the possibility of a general occupancy chanced to occur, was abolished by the Statute of Frauds; and most of the illustrations of *occupatio* derived from English law must now be sought in the rules as to personal property. Even there the field is a very restricted one. Feudal ideas on the subject of game and fisheries have made wild animals comparatively unimportant as subjects of casual seizure: the Roman legislator was content to give the landowner the right of politely warning the sportsman off the premises. Perhaps the principal subjects of occupation in our law are things which their owners have abandoned; and this class, again, is reduced to a very shadowy minimum, if the reasoning of certain recent cases is sound, which, by a benevolent fiction, attributes to the possessors of land an intention to possess every chattel abandoned thereon, whether they have any idea of its being there or not.

But in International Law, which, as Blackstone informs us, is, in some mysterious way, part of the law of England, the subject in question assumes an aspect of much greater importance, as might have been expected, considering the extent to which that law has derived the substance of its rules from the Roman system. There is a good deal of the earth's surface which has not yet been reduced into possession by civilized nations. Yet their agents, authorized and unauthorized, are constantly making expeditions, hoisting flags, forming settlements, and doing other acts of possession outside the limits of their respective territories. Such acts of possession, if they reach a certain degree of intensity, confer a title by occupation, which is internationally valid. But when we come to inquire what acts attain this requisite standard, and what extent of territory the occupation carries with it, the answer is not always readily forthcoming. The matter is still further complicated when the land in dispute has not always been derelict, but has been abandoned by some other civilized power previously in possession. Such an abandonment is

perfectly possible, though not common. The island of St. Lucia—the same West Indian island which has just recently been visited by so disastrous a hurricane—was colonized in about 1638 by the British. The career of the settlement was short, and not sweet; it is variously stated as lasting from one to three years, when the aborigines from other islands of the archipelago put an end to its existence (it is said, by smoking the colonists out with dried red pepper) through resentment at the conduct towards Dominican natives of some of our pioneers of civilization. Only nine or ten years elapsed before the French appeared on the scene and took possession of the island, remaining there for at least twenty years, and displaying the customary aptitude of their nation for conciliating their savage neighbours, *inter alia*, by adopting their costume—so their enemies alleged. Their ownership was accordingly confirmed, at the Peace of Paris, a hundred years later, when the sister islands of St. Vincent, Dominica, Tobago, and the Grenadines were allotted to this country.

It is a question, in each case, of more or less difficulty, whether such an express or tacit abandonment of territory has taken place. Naturally, the more firmly the former occupiers were established, the less easy will it be to infer from their acts that they meant to release their hold. If all its inhabitants were to emigrate from St. Kilda by the next steamer, it would be long before Russia could validly take possession of it for a coaling station. In the luxurious times when there were Indies to be lighted on by the navigator, and islands to be had for the asking, mere discovery seems to have been relied on as a ground of asserting ownership. Now that our limits have grown so painfully contracted that we find it necessary to turn our attention to Mars, and ransack the skies for the fresh interests which the seas have ceased to afford us, discovery has become inadmissible as a means of monopolizing any part of our restricted heritage. Even such acts as annexation by the hoisting of flags require

to be, sooner or later, supplemented by more substantial acts of occupation, in order to exclude from the spot the hungry army of nations anxious to extend their borders. And the generous limits which the practice of a former age accorded to the area over which sovereignty was acquired by the establishment of a fort or settlement, have, at the same time, been much restricted. The possession of a post at an estuary, for instance, no longer forms a ground for claiming title to the whole of the river-basin.

Of course, in the case of a small island, there is not, and never was, any difficulty in fixing the limits of the sovereignty which ensued on the formation of settlements, or the performance of other acts of possession upon it. The whole island passed, and passes, to the incoming power. The same principle is still employed in the case of the larger islands. On the coasts of continents and of the largest islands, occupation gives rise to difficulties, for the solution of which there are nevertheless certain well-known (if not too well-established) rules. But when we come to deal with land in the interior of continents, we are almost without the assistance of authority in determining what area of territory is affected by such acts as we have mentioned. It has long been foreseen that the partition among civilized peoples of the interior of Africa would be attended by grave difficulties of this kind. To avoid them, so far as possible, was the object of the numerous conventions which the principal powers have entered into among themselves, providing that they shall not infringe each other's sphere of influence. Such treaties, of course, do not create (as some jurists seem to have thought) any new rules of portioning out African land: they affect no one but the parties to them, and do not restrict in any way the rights of third parties, which must, as France has successfully shown in West Africa, be determined on general principles.

These are not easy to lay down. Dismissing as altogether

antiquated the doctrine—last seriously urged, by the United States, in the celebrated Oregon discussion of sixty years ago—that the possession of a river's mouth carries the right to the whole river-basin, the one rule which offers itself for our guidance is that the owner of coastal land must be recognized as being in occupation of the region behind it; not—as some would have it—to an indefinite extent, but as far as the watershed. This is a reasonable principle, for the crest of the watershed is universally accepted as the proper boundary in cases where countries are separated by mountain ranges. It is also a principle as to which, as Twiss says, there has never been any dispute among nations. The unsettlement of such clear rules on the plea of altered circumstances is strongly to be deprecated and jealously to be guarded against. In virtue of her coast-line, therefore, Egypt appears (subject to the rights of Abyssinia) to be in constructive occupation of a tract of land which would, at all events, include Fashoda; which is approximately in about the latitude of Cairo, and of course, within the watershed of the Nile. The case of the Columbia River, in Oregon, is different, for the head-waters take a sharp turn, which brings them behind the British coast line, and so, on Twiss's principles, gave them to this country.

If this doctrine is not applicable to the special circumstances of the Nile valley, still Egypt has a much more meritorious claim to fall back upon, though, unfortunately, it is not an indisputable one. This lies in her actual occupation of the Nile provinces below Khartûm, as far south as Sabat and even further. It is not necessary here to trace the tangled story of Mehemet's prowess and Ismail's ambitions. Only a few facts need be glanced at.

South of the junction of the White and Blue Niles at Khartûm, there lie, to the west, the provinces of Darfûr and Kordofan; and to the east, between the Niles, that of Senaar. These were subdued in 1820; and Egyptian



authority, such as it was, gradually extended down the Nile to somewhere south of Fashoda, and into the Bahr-el-Ghazel district to the south-west. But what kind of an authority it was, and what were the exact limits of its exercise, away from the river, it is not easy to discover. Nor is it very material to do so, for in 1870 an entirely new departure was taken. Ismail of Egypt became seized with the desire to extend that country's dominions into the far south, down to, and perhaps so as to include, the Nyanzas—at the same time consolidating these acquisitions by the construction of a railway from Cairo to the Lakes. The all-important railway never became a *fait accompli*; but the Equatorial Province of Egypt did (though its limits stopped short of the Nyanzas). To bring the country thus annexed into submission, Ismail employed successively Baker and Gordon. The measures which were taken by these governors against the slave traffic, particularly those which Gordon employed, had the effect of arousing a spirit of deep discontent, not only in the new province, but also in the old dominions of Egypt, to the north, which had been conquered by Mehemet Ali in 1820. Then came a succession of Egyptian native governors; and finally the revolt of Kordofan and Darfûr, the defeat of Hicks' army, and the abandonment of Khartûm. Fourteen years have elapsed since then, and Khartûm has been recovered. We have become so accustomed, for the last few years, to look forward to the latter event, that one forgets that for a time it was quite on the cards that Khartûm—still more the Nile to the south, and Darfûr, Kordofan, and Bahr-el-Ghazel to the south-west of it, would be given up to the undisturbed possession of the Arabs. Cherif Pasha resigned office, with his cabinet, because we would not permit any attempt at their recovery. It is mainly the aggressive attitude of the Khalifa which has induced us to permit him at length to be “smashed.”

On these facts, it really does seem, that not only is there a

"Fashoda question," in spite of the fervent declarations of so many pens to the contrary, but that there is something to be said for the French view of the case. We shall not do our country an injustice, nor shall we be guilty of a want of patriotism, by candidly facing the true state of affairs. When a civilized province rebels, there is a certain point at which the efforts of its rulers to subdue it become so futile, that it may properly be recognized as independent. Evidently, when the province is barbarous, this is the point at which it may justifiably be occupied by other nations. Now, the classical instance of recognition of the independence of revolted districts, is the case of the Spanish American republics ; and here such a recognition was refused to Chili and Argentina for twelve or eighteen years from the practical cessation of Spanish efforts against them, on the ground that Spain possessed bases of operation in Mexico and Peru. In this case, the previous authority of Spain had been definite and undisputed, and she had neither expressly nor tacitly given up her claim to the colonies in question. Egypt has all along possessed a powerful base for the re-conquest of the Sûdan, but it is only within very recent years that she has given unequivocal proof of her desire to accomplish the design in its full magnitude. At first, appearances were all the other way, though the policy of scuttle was not approved on all hands. "If Khartûm should be abandoned," wrote Baker, in 1884,\* "Egypt will have abdicated her right, and the country will become an easy prey to the first adventurer. If I were a Frenchman, I should not neglect the opportunity." And Khartûm was abandoned. It is quite admissible *reculer pour mieux sauter*, but if a nation does not make clear its intention of leaping, and delays its spring for fourteen years, it is not a violently offensive inference that the retreat was not altogether with that end in view.

Nine years' absence, in fact, though a continual claim to

\* *Nineteenth Century*, July, 1884.

the island seems to have been made, was enough, as we have seen, to destroy the British right to St. Lucia. On the other hand, a strong case against France is that of Delagoa Bay. There Portugal, admittedly in possession to the north, had for centuries exercised a spasmodic and lax jurisdiction to the south, of the Espirito Santo River. In 1823 the British attempted to gain a footing in the latter district, there being no visible signs of Portuguese sovereignty, which was repudiated by the natives. France, as arbitrator, decided that this was an invasion of the rights of Portugal. But, in this affair, there had never been any such decided retrograde step on the part of that country to compare with the evacuation of the Sûdan after Hicks' defeat.

Not much benefit can be taken from the argument that Egypt succeeded, at Omdurman, to the rights of the Khalifa. The rights of a barbarous anarchy are, of course, *nil*. This shifting of ground, too, is more worthy of special pleading than politics. To rely now on British, now on Egyptian claims; to derive title, first against the Khalifa, and then through him, is reminiscent of the historic defence to an action for conversion of a shovel, namely, (1) that the defendant never had it, (2) that it was given to him, (3) that he sent it back.

It is impossible not to feel some sympathy with the French delight at Marchand's exploit. In the midst of the chronic national *malaise* which has fallen upon her—after Panama scandals, Boulanger intrigues, Dreyfus spectres—one feels that there is still life and pride at the core of France, despite the livid scum of decadence on the surface. The Power whose presence in Egypt is (unreasonably enough) such a sore trial to France, brilliantly establishes herself at Khartûm; she pushes on to extend her conquests southward, and there, at Fashoda, she encounters the French officer, with his hundred Senegalese, worn and travel-stained, but with the tricolour planted at the post which once was Ismail's. And cynical, *fin-de-siècle* France, choked with

coupons, bordereaux, dossiers, feuilletons, thrills and flushes with gratitude and healthy interest—for which the world feels fresher.

But Sir Edward Grey said, three years ago, that it would be an unfriendly act if France were to infringe our sphere on the Nile? Quite so; and so it might be said still. If a nation marks out for itself a sphere of conquest, it is not a very friendly thing for another nation to come in and interfere with the district before the scheme can be carried into effect. But it is none the less entirely within its rights in so doing. To occupy land in the territory of another State is not “an unfriendly act”—it is war. When Sir E. Grey spoke, it was a year before the advance up the Nile of the Anglo-Egyptians had been mooted. True, he mentioned “Egyptian claims in the Nile Valley”—but only to class them with our own “sphere of influence” in the same neighbourhood. At that time, “spheres of influence” were new things in Africa, and their value was not so much discounted as it is at the present day. By arrangement with Germany and Italy we had secured such a sphere on the Nile; and it is not surprising that we should have felt annoyed at the French, taking advantage of their not being bound by these agreements, to disturb our enjoyment of it. Read Sir E. Grey's lengthy speech *in extenso*, and the “clear and definite assertion of a right,” of which so much is made, dwindles to a passing reference, of considerable vagueness, which leaves no distinct impression but that the speaker regarded the German and Italian agreements as the main factors in the situation, and put a quite undue value upon them as affording a reason for regarding French intervention as “unfriendly.” There is no need to strain his language. Diplomatic phraseology is delicate. But a House of Commons speech does not lightly glance at an “unfriendly act”—and mean “a casus belli.” Stronger, and graver, words are needed than that.

One might say that the acquisition of Delagoa Bay by Germany would be "an unfriendly act." But it would be quite lawful. And in this sense it is clear the phrase was used by Sir Edward, with reference to French designs on the Nile.

They may be right, or they may be wrong, in assuming Fashoda open to occupation. If they should be right, Egypt need not grudge them their acquisition. The waters of the Blue Nile, which reach Khartûm from the mountains of Abyssinia, are of the greatest importance to Lower Egypt. Those of the Bahr-el-Ghazel, which meet the White Nile above Fashoda, are not so. Whatever may be the extent of the district which France has, if so be, gained on the banks of the Nile by the occupation of that post, it is of little consequence to Egypt. And, as our occupation of that country is entirely disinterested, if Egypt is satisfied, so may we be.

TH. BATY.

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#### V.—THE UNIFICATION OF MARITIME LAW : ANTWERP CONFERENCE, 1898.

EVERY one connected with maritime and legal affairs is aware that at present maritime legislation has one great defect : the law in different states varies considerably on essential points. The consequence is that a ship, in the course of a single voyage, is often liable to change its law as often as it changes its port, a condition of things which may seriously endanger the interests of the adventure. Another consequence is that the parties often make great efforts to have a lawsuit tried in one country sooner than in another, and endeavour artificially to extend, by means of procedure,

the jurisdiction of the tribunals of those countries whose legislation seems most favourable to their case.

It is unnecessary to insist at any length on these evils, which everybody recognizes. Suffice it to say that this divergency of law is only of recent growth. In fact, towards the end of the Middle Ages maritime customs were almost identical in all countries, and it is positive legislation alone which has introduced striking differences. These differences, however, are neither necessary nor useful. They are simple accidents, which happen because each country legislates for itself, without troubling as to what takes place beyond its borders. But this neglect of foreign countries is not justifiable in maritime matters, as the vessels of each nation are intended to make use of the ports of all other nations.

The position of Great Britain with regard to this important question has been very well defined from the beginning of the Antwerp Conference by the following exchange of views :—

Mr. Charles MacArthur stated that it was advisable not to go by the vote of the majority. Great Britain alone possessed more than half the tonnage of the world.

The observation was very just, but it was not less just, as was pointed out by Senator Rahusen of Amsterdam, that exactly because England possesses more vessels than all the other nations together, she is more exposed than any one else to the inconveniences of the conflicts of maritime laws.

These, then, are the two sides of the question, and we may say that no nation is more interested in these matters than England.

The Antwerp Conference, which met on the 29th of September and the following days, was organized by the International Maritime Committee.

This Committee is the centre and representative of a series of national associations which have been formed in the various

countries. These associations are composed of leading ship-owners, underwriters, lawyers, and merchants. They are permanent ; their object is to work towards the unification of maritime law.

These national associations or committees, which form the basis and distinctive feature of the work, present at the present moment a considerable weight of opinion. The plan on which they have been formed is not everywhere the same. In Germany and in Belgium numerous associations have been formed (over 200 members in Belgium and over 500 in Germany), and these associations consist of all those who have any considerable interest or an important position in the maritime world. The German association has as its president Mr. Sieveking, President of the Hanseatic Court ; the Belgian association has as president the Minister of State, Mr. Beer-naert, President of the Chamber of Representatives. In other countries committees have been formed, which, though less numerous, yet represent, by the position of their members, the opinion of the maritime community. Such is the case notably in Holland and in France. In the latter country the number of the members has been fixed at 50, and the lists contain all the most important names in ship-owning and underwriting circles.

Lastly, in England Sir Richard Webster suggested, in 1897, at the time of the first Conference of the International Maritime Committee, that the International Law Association should constitute in England a special Maritime Committee, to enter into relations with the International Committee. This was done under the name of " The Maritime Law Committee " of the International Law Association.

The organization which we have just described may appear a little complex, but experience has already shown that it works easily, and that its apparent complexity is only a natural result of the situation in different states.

The following is the mode of procedure. In June, 1897, a

first conference was held at Brussels. There the members present only chose the questions to be discussed in the first instance. This choice was very important, for it was understood from the beginning that the questions should not be numerous, but should be of an immediate practical interest.

The questions chosen were "Collisions," and, at the request of the English delegates, "The limitation of the responsibility of ship-owners." These two matters were divided into eleven questions, and the different associations and national committees were invited to discuss these and to formulate answers. They all carried out this desire, so that when the Antwerp Conference met, everything had been prepared by thorough discussions in the different countries. The national groups were represented at the Conference by members or special delegates.

The English members were : Messrs. Chas. MacArthur, M.P., T. G. Carver, Q.C., John Glover, Douglas Owen, and Thos. R. Miller.

The Conference received the greatest attention from the Belgian authorities. On the first day the inaugural meeting took place in the Town Hall, where the Burgomaster of Antwerp and the Minister of Justice welcomed the members. At the end of the Conference, they were received by His Majesty the King at the Palace in Brussels, and every member was individually presented to him.

The debates, under the presidency of the Minister of State, Mr. Beernaert, were very interesting. From the first it was seen that there was a strong desire to arrive at an agreement. And on a great number of points the replies of national associations were alike. This as a first result is very important. It is not uncommon to hear members of congresses express conciliatory sentiments, which do not meet with the approval of their countrymen at home ; but these opinions were the result of independent discussions which had previously taken



place in the various countries amongst those directly interested.

We may say that if maritime legislation were uniform on those points on which this agreement has been shown, a great progress would have been achieved. These points are as follows :—

1. *Inevitable Accident*.—Nothing seems more natural than to leave the damage where it falls when the accident is inevitable. Certain countries, however, deviate from this rule when one of the vessels is stationary. In these cases the vessel which is under way must pay half the damage, and sometimes even the cargo contributes. These anomalies occur in maritime countries of the importance of Holland and Russia.

At the Antwerp Conference, the Dutch delegates agreed with the association that there was no reason to keep up this exception, and the vote of the Conference on this point was unanimous.

2. *Inscrutable Fault*.—It is an universal rule that the claimant must prove the basis of his case. If he does not succeed in convincing the judge, the claimant must lose his case. Nevertheless, a great number of legislations do not apply this rule in cases of collision at sea, and if the case remains in doubt, they decide that each party shall bear half the loss.

On this point also all were agreed, and it was unanimously decided that cases of inscrutable fault ought to be treated in the same manner as cases of inevitable accident.

The countries which would have to alter their legislations in consequence of this resolution, are France, Holland, and several of the South American States.

3. *One Ship to blame*.—On this question, which was merely put that all cases should be provided for, the replies could only be uniform. The party which alone is to blame must bear all the loss.

4. *Compulsory Pilotage*.—A much more lively and most

interesting discussion arose on the question of compulsory pilotage.

As matters stand, the English and German legislations admit that the ship-owner is not responsible for the fault of a compulsory pilot. On this question the English committee replied that there was no reason to maintain this exemption from responsibility. The same answer was given by Germany. But in France opinion was divided, and a majority of the French association desired an exemption which they have not at present. Hence a most interesting discussion, in which the system of the responsibility of the ship-owner was upheld, notably by Mr. Carver, Q.C., Mr. Lacisz, ship-owner and president of the Chamber of Commerce of Hamburg, by Mr. Sieveking, and by the present writer; whilst M. Marais (Rouen), M. Loder (Rotterdam), and M. Autran (Marseilles) were against it.

The chief argument for exemption is that the pilot, being appointed by the authorities, is not the servant of the ship-owner. But it was answered that if you exempt the ship-owner from this responsibility, you put upon innocent third parties the liability for accidents which are caused by the fault of the pilot. This, however, is manifestly unjust, for if pilotage were free, it would be the ship-owner's own risk if he had on board an incompetent or careless pilot. Besides, the intervention of the authorities in the selection of the pilots must raise their average quality, and any arrangement which diminishes the risks of the ship-owners cannot be a reason for suppressing their responsibility.

It was added that the pilot should only be an adviser, and that it is not advisable that the captain should be able, in any circumstances, to abandon the supreme control of the vessel. He must remain the master. Whilst, therefore, it is possible that in practice and to facilitate the navigation of the ship he lets the pilot give orders, it must be under his own responsibility.

This latter solution was finally accepted almost unanimously. All the English delegates voted in this sense, as did also the delegates from Germany, Norway, Denmark, and Belgium. The majority of the Dutch group were also favourable, and in France there was a majority of one against. Finally, however, those who had voted against the resolution declared that they would join the majority.

5. *Both Ships to blame*.—Here we touch one of the most important conflicts. A great number of collisions are really due to the fault of both captains, but in most cases the degree of fault is very unequal. In this case the English judge must nevertheless condemn both to bear an equal part of the damages. The German and Dutch judges must be more severe still, and afford no redress whatever. In a great number of countries, however, the judge may divide the indemnity in proportion to the degree of fault. And this principle was accepted unanimously. It is well known that the majority of competent judges in England have declared themselves in favour of this change in the English law, which is on the face of it very equitable. The only objection which was raised, was the difficulty of the judge deciding the proportion of fault. But this must be recognized as a question of practice. Besides, the rule of proportion has existed in France, Belgium, and Norway for many years, and the judge finds no difficulty in this division. It is not a question of a problem in algebra, but simply of common sense. The allowed proportions are not to exceed the quarter or the fifth. It was also supposed that this system would give rise to more appeals, but experience again goes to prove the contrary.

One question alone relating to "both to blame" was not decided. It refers to the rights of the cargo and of the relatives of those who lose their lives. Are they to be allowed to proceed against both vessels jointly, allowing the vessel which has paid more than its share to obtain redress against the other vessel?

Or is there no joint responsibility, and is the cargo of each vessel only to recover from the other vessel in the same proportion as the ship in which it is laden?

In favour of the first system\* it was said that according to common law the victim of the combined fault of both parties may attack them both for the whole, and it was asked why this principle should not be applied to maritime matters.

It was added that one cannot expect the cargo to prove that one of the vessels was to blame for two-thirds and the other for one-third.

This opinion was upheld by Mr. Sieveking and the members from Hamburg. Messrs. MacArthur for England, Autran for France, Asser for Holland, and the present writer for Belgium were against this view of the matter, saying substantially: Once the share of responsibility of each vessel has been decided, it cannot be condemned to pay more. On the other side it was argued, that the vessel which has paid more than its share for the cargo can obtain redress from the other vessel for this excess. But this system would lead to very serious complications by reason of the clauses of exoneration in the bills of lading, and of the principles of limitation of liability.

For instance, the damaged cargo is on board the vessel *A*. This vessel is protected by a clause of exoneration for negligence. The cargo, therefore, claims from *B*, and according to the system of joint and several responsibility, claims the whole of the damage, although *B* is only responsible for, say, one quarter. *B* having therefore paid three-quarters too much, claims a contribution of three-quarters from *A*. What is to be done now?

If it is said that by reason of the clause of exoneration in the bill of lading of *A*, *A* owes nothing, then in spite of the rule of proportion, *B* has to pay for all the damage to the cargo of *A*, which is unfair. If, on the contrary, *B* can obtain

redress from *A*, then *A* has, in a roundabout way, to pay for the damage to *its* cargo, although the latter has renounced this claim.

After a very interesting debate, a compromise was proposed by the German delegates, who would be satisfied to have the principle admitted that it should be sufficient, when the cargo claims from one vessel, to prove that this vessel was to blame, and if this vessel alleges that the other vessel is also to blame, then the onus of proof of the fact would be in the former vessel.

Mr. Carver replied that in England this would be the case.

Nevertheless, on the suggestion of Professor Lyon-Caen of Paris, it was deemed advisable to continue the discussion on this subject at the next sitting.

Subject to this reserve the principle of proportionate assessment in case of "both to blame" was accepted unanimously in the following terms proposed by Mr. MacArthur:—

"Where both ships are to blame for a collision, the total damage to persons and cargo should be apportioned between the ships, having regard to the degree of fault. This rule does not affect the liability of the carrying ship to her cargo under her contract."

6. *Tug and Tow*.—In this matter the various countries disagreed. Belgium and France consider that the tug and the tow must each be responsible for their own faults, but in no case for each other's. In other words, they do not allow that the tug is juridically the servant of the tow, and they maintain strongly that if for instance the accident is due to a defect in the machinery of the tug, or to a sudden manoeuvre on her part, which the tow could not prevent, the latter should not be responsible.

England, Germany, Holland, and the Scandinavian countries, on the other hand, consider that the tow employs the tug for its use, and consequently at its own risk.

One sees here, again, an argument, which does not seem to have been borrowed from the common law, and which consists in basing the responsibility of the ship-owner, not on the choice he makes of his servants, or on the authority he has, but solely on the fact that he is the man who undertakes the whole adventure, and that therefore he must sustain the risks. This latter opinion prevailed.

7. *Interest on Damages*.—It was admitted, after a short exchange of views, that it was not possible to enter into details, and that it should be sufficient to claim complete compensation according to common law.

8. *Protests and Limitations of Rights of Action*.—A great progress in practice would be realized, if the principle approved by the Conference with regard to these matters were made law in all countries. There remain, however, a great number of countries, notably Belgium and nearly all the States of the Mediterranean, where, in case of collision, a law-suit is lost if the captain does not make complaint within twenty-four hours, and if he does not prosecute his claim within the month. This is a great difficulty in the path of procedure.

The Conference was unanimous in proposing the suppression of these formalities, and stated that the system which is followed in England and the United States and also in France, is much to be preferred.

9. *Prescription*.—As regards prescription, all the countries were unanimous in fixing it at two years. The English delegates stated that they had not adopted a fixed delay, and left it to the Court to say in each case if it had been presented with due diligence, and Mr. Douglas Owen pointed out that in some cases the delay of two years might be too short. It was answered that the law now in force in England placed British ship-owners in a very unfavourable position. They cannot sue on the Continent after two or three years, whereas in England they are liable to be sued for many years. Besides, it is in the interests of commerce that law-suits

of this kind should be settled rapidly and done with. All that can result from this very practical reform is that, if the vessel which is responsible for the accident cannot be arrested in the British jurisdiction, one would have to apply to the Foreign Courts. But this holds also good for foreign ship-owners who in the same circumstances would have to apply and do apply to the English Courts.

The principle of a prescription in two years was therefore voted unanimously, but it was understood that it would be further considered at the next sitting if it was necessary to provide exceptions to the rule.

The above are the resolutions on which the votes were practically unanimous.

It is always possible to decide questions by means of a majority, but the influence of such votes depends upon whether the question is ripe, especially when the minority is important. We believe, therefore, that the Conference has acted wisely in reserving certain resolutions, although there has been a debate on each of them.

The following are the questions which remained open :—

*Collisions.*

1. Is it necessary to make exceptions to the rule settled in cases of towing ?

2. Is there any reason for making exceptions to the rule settled relating to prescription, and to make a special rule for cases of interruption and suspension of prescription ?

3. In cases of collision where both ships are to blame, should the owners of the cargo and other third parties be able to claim against the two vessels concerned jointly ?

4. Is it necessary in cases of accident to settle the jurisdiction—(1) as regards measures which are provisional or for the preservation of the rights of the parties ; (2) as regards the merits of the case ?

*Responsibility of Ship-owners.*—Should the responsibility of the ship-owner be a personal liability, and, if so, should it be

limited, and to what amount? Or should the liability be limited to the vessel, including the freight and all rights of the owner in the vessel after the accident?

This last question is of the utmost importance. The opinion of the present writer is that it is not inseparable from the questions relating to collisions; that there may, in fact, be agreement on the principles of responsibility, and yet difference as to the degree in which these rules shall affect the property of the ship-owner. But it is certain that a settlement is much to be desired, for it is undesirable to see English ship-owners treated more harshly in this respect than their colleagues on the Continent and in the United States. There is no doubt that the difference in treatment is favourable to the latter. This difference shows itself in two ways: (1) The English ship-owner has always to pay £8 per ton, and may have to pay up to £15 where there are personal injuries, whereas the foreign ship-owner has only to pay up to the value of his vessel; if, therefore, the English vessel is worth less than £8 or £15, the result is very unfavourable to the British owner. In these cases a great proportion of the vessels are not worth this sum. (2) The Continental ship-owner, being held liable only up to the value of his vessel and the freight—that is to say, his “fortune at sea”—practically pays nothing if his vessel is lost in the collision, as very often happens.

I do not wish to discuss these two solutions. It is said, in defence of the English system, that it is unfair that, in case the vessel goes down, the injured parties should be unable to recover, and that it is better to maintain a rule of personal liability at sea as on land. It is said, in defence of the Continental system, (1) that there is nothing unfair in limiting the liability of the owner to the vessel and the freight, so that he knows in each voyage how much he risks; (2) that the figures £8 and £15 are altogether arbitrary, and that no others can be given which would be always fair; (3) that the



system of liability only up to the value of the vessel and freight is admitted all over the world, except in England, and that it is easier to alter one legislation than all the others,

Each of these two points of view has been very strongly advocated. The English system was defended with as much ability as vigour by Mr. Douglas Owen and Mr. Carver, Q.C., and was attacked with no less force by Mr. John Glover and Mr. Thomas R. Miller, who stated that English ship-owners desired that the law should be on the Continental model. Mr. Le Jeune (Antwerp) and Mr. Sieveking argued on the same side, and Mr. Charles MacArthur expressed the hope that a settlement might be arrived at. Finally, the Conference decided to continue the discussion of the question at the next meeting. There certainly was a great numerical majority in favour of the Continental system, but this is one of the questions in which unanimity has yet to be arrived at—not by votes, but by discussion.

The present writer has the firmest confidence in the future of the movement. The next conference will, at the invitation of the English members, take place in London, and it is certainly much to be desired that the conference should be organized by the International Law Association and the International Maritime Committee combined. There is and can be no feeling of rivalry between the two organizations; the programme of the International Law Association embraces a great number of matters which are altogether outside maritime law, and it will continue its work for maritime law as in the past. The particular work of the International Maritime Committee, which was created with the approval of the International Law Association, lies in taking questions in small numbers which seem ripe for a practical solution, in submitting them to the national associations and committees, and in endeavouring to get them introduced into positive law.

The utility of the work to be done is so great that it is bound to succeed, and it is to be hoped that the practical, reasonable, and moderate character which it has assumed will particularly recommend it to the English mind.

LOUIS FRANCK.

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## VI.—NOTES ON RECENT CASES (ENGLISH).

In *Bayliss v. Figgins* (33 L.J. 345), Mr. Justice Channell held that expenses incurred by the urban district council of Southall under the Public Health Act, 1875, s. 150, and summarily recovered by the council from the plaintiffs, were not rates, taxes, or assessments, recoverable by the plaintiffs (landlords) in their turn from their tenants (defendants), under the usual covenant for that purpose. This decision we submit is wrong. It is quite at variance with the catena of earlier decisions on the very point emanating from the Queen's Bench and Chancery Divisions. As a rule, the cases run thus:—Certain works are prescribed by a local authority; the landlord is called upon to execute them. He does so, and in his turn calls upon his tenant to reimburse him under a covenant for that purpose inserted in the lease. Tenants have escaped in cases where no such word has occurred as "charge," "duty," or "outgoings," or where there have been no words extending to charges upon the owner, or where there are words indicating an intention that the landlord is to pay. But where the words are complete, as they are in *Bayliss v. Figgins*, it is evident that the governing intention of the lease is that the landlord shall get his rent clear of all deductions. A glance at such cases as *In re Bettingham*, *Methado v. Woodcock* (9 *Times* R. 48); *Hartley v. Hudson* (4 C.P.D. 367); or *Smith v. Robinson* [1893] (2 Q.B. 53), abundantly establish the truth of our criticism.

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It is an axiom of the law that if a man leave anything dangerous in a place where he knows it is extremely probable that some other person will unjustifiably set it in motion to the injury of a third person, should such injury be brought about, the sufferer may have redress by action against both or either of the two, but unquestionably against the first. But the Courts have not sufficiently given effect to the position of a plaintiff when he has touched something which did not belong to him, and to his own detriment. Lord Denman missed the occasion of leaning on this latter point when he gave judgment in *Scott v. Shepherd* (2 Wm. Black. 892), and the evil has been perpetuated ever since. In *Harrold v. Watney* (33 L.J. 343) lately determined by the Court of Appeal, the learned Judges extended this pernicious doctrine to the extent of awarding damages to a small boy who injured himself by climbing on a fence belonging to the owner of the adjoining land, not for the purpose (it was said) of climbing over, but to look at some other children on the other side. In fact, the boy was a trespasser. Our trans-Atlantic cousins are wiser in this generation than we are. In their leading case (*Hartfield v. Roper*, 21 Wend. 615), their Court has held that the negligence of the parents in allowing a child to wander unattended in a public road is sufficient answer to an action for negligence.

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When a livery stable-keeper supplies a servant, but the brougham, the horse, the harness, and the servant's livery belong to the hirer, who is answerable in the event of an accident—the livery stable-keeper or the hirer? Of course negligence is admitted on the part of the servant. But is the owner of the horse, and who had legal possession of the horse at the time of the accident, the person to be held liable; or is the test of liability the principle of selection, *i.e.* the person who had the selection of the servant? The question

was well debated in *Jones and Sons v. Scullard* (105 L.T. 358); and the Lord Chief Justice, in holding that the servant was the servant of the hirer, expressed a wish that the matter might be taken to the Court of Appeal. The authorities, in fact, are conflicting. *Laugher v. Pointer* (5 B & C. 547) lays down that where the owner of a carriage hires of a livery stable-keeper a pair of horses, and the livery stable-keeper provides the driver, the owner of the carriage is not liable for the negligent driver. This is followed by *Brady v. Giles* (1 M. & R. 494); *Randleson v. Murray* (8 A. & E. 109), and *Quarman v. Burnett* (6 M. & W. 499). On the other hand, in *Rourke v. White Moss Colliery* (2 C. P. D. 205), it was held that if the defendants sinking a shaft agreed with W. that he should find all the labour, they providing him with engine-power and an engineer who was to be under his control, and one of the men employed by W. was injured by the engineer, the defendants were not liable. The engineer remained the general servant of the defendants, yet being under the control of W., he was the servant of W. and not of the defendants at the time of the accident. This case is followed by *Donovan v. Laing* (68 L.T. 512).

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The judgment of Mr. Justice Darling in *Adam v. British and Foreign Steamship Company, Limited* (33 L.J. 396), is not altogether free from adverse criticism. The mother of an engineer employed on a Belgian ship brought an action against the defendants under Lord Campbell's Act (9 & 10 Vict. c. 93), to recover damages for the loss of her son, drowned at sea through the negligence of the defendants. The questionable decision of Mr. Justice Darling is that the personal representatives of the deceased could not maintain an action under the above Act, or as amended by 27 & 28 Vict. c. 95. It was held in *The Explorer* (40 L.J. Adm. 41) that foreigners injured, or the representatives of foreigners killed, may sue in the High Court of Admiralty, in respect of

injuries done by a British vessel on the high seas, and this decision is not overruled by *Seward v. Owners of the Vera Cruz* (54 L.J. Adm. 9), because the latter case refers to an action *in rem*, not to one *in personam*. The latter action was brought in a form appropriate to actions *in rem*. Lord Campbell's Act was the sole source of the right in *Adam v. British and Foreign Steamship Company, Limited*, if the right existed, and we should look to that Act to see whether a claim made under it can properly be described as a "claim for damage done by any ship." There is not a word about ships in Lord Campbell's Act. It is an Act which deals with a category of cases which may include injuries done by persons responsible for the navigation of ships to persons suffering by default in that navigation ; but it only includes them as part of a much larger and more general category. The legislation points to a common law action, to a personal liability, and to a personal right to recover, and is absolutely at variance with the notion of a proceeding *in rem*, on which alone *Seward v. Owners of the Vera Cruz* was decided.

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*Penny v. Wimbledon Urban Council and Iles* (33 L.J. 345) follows in the wake and to the same intent as *Hughes v. Percival* (8 L.R. App. 443). It is evident that a district council employing a contractor to do work in a place where the public are in the habit of passing must take precautions if the work is likely to cause danger to the public. If these are omitted, they cannot, on damage ensuing, escape liability by seeking to throw the blame on the contractors. No sound distinction in this respect can be drawn between the public highway and a road which may, and within knowledge probably will, in fact, be used by persons lawfully entitled to do so.

## VII.—JUDGE AND LAWYER.

**I**N one of Herbert Spencer's essays on the development of professions, dealing with that of Judge and Lawyer, the eminent philosopher holds that the primary conception of law, which continued almost unchanged for a very long period, is that it was ordained by the Divinity, either by direct revelation or through the medium of Kings elected by God and acceptable to Him. Until the utilitarian idea gradually dawned in the minds of men, there was, of course, no justification for the law except its divine origin, direct or indirect. Hence it came that the first laws were enunciated in the form of commands by those who were in contact with the ruler ; and that after his death the worship of his apotheosized spirit was continued by others, who thus in time became his priests, the interpreters of his will, the mouth-pieces from whom issued the injunctions of the Divine Spirit.

These priests, then, were in those primitive times the only persons who knew the law, and were therefore alone able to apply it and act as judges.

This system, which Spencer has touched upon in his "Principles of Sociology," is illustrated by him with examples taken from the Indians of Guiana, the Kalmucks, and the Jews, from Egypt, Greece and Rome.

But to say that all peoples in primitive times have had priests for their legislators and judges, is too general an assertion, and is as dangerous as other generalisations.

In the infancy of peoples, all functions are combined and confused. Executive, legislative and judicial power, religious, social and military authority, were all one in the hands of a few—the strongest.

Religion is in itself a force, in certain moments even the all-overpowering one. As regards this early period, we may safely admit the existence of the association suggested, which is true not only of the legislative and judicial power, but of all social functions without distinction. It constitutes, therefore, no peculiar characteristic of any one of them. It is not that the priests had the administrative power in their hands, but that they, as the dominating class, united the functions of the priesthood with those of justice as a consequence of their power, and also as a means of preserving it.

Instead of justice, we should rather say infliction of punishment, for in primitive times justice resolved itself into the infliction of punishment, either as a defence of personal authority, or to make its weight indirectly felt. However undeveloped they may be, it is always necessary to distinguish between legislative and judicial functions. The former, among some peoples little adapted to the development of law, remain in a rudimentary condition, so that a few general rules and a certain freedom in their application suffice, while on more suitable ground the mechanism of law perfects itself with amazingly rapid progress. Where the conditions are not favourable to the progress of law, it is absorbed by the theocratic element; thus it stagnates, as in India, into subtle dialectics, exterior practices and timid creeds, which stifle the substance. If, on the contrary, the field be one in which law flourishes, it soon detaches itself from theocracy, only preserving, as far as possible, respect for form and creeds. We may say—it is nothing new, but a profound truth—that in this struggle between religion and law lies the secret of the height to which the latter has risen amongst some peoples, and more especially in Rome: a struggle long and tenacious, though at first sight almost imperceptible, just because it was masked by respect for appearances.

From the moment of separation and of antagonism, dates the commencement of the legislative, and more particularly, of the judicial functions. Not before. For up to that time it is manifest that there had been only the effort on the part of one or more persons to preserve and increase their own authority, with a total disregard of social needs, and without any idea of tutelage. In those early times, therefore, there was not even the germ of development, for there was as yet no movement.

It becomes, then, our duty to distinguish between judge and legislator, to avoid confusion between the two functions which do not proceed *pari passu*. If from among the examples given by Spencer we take that of the Jews—the people who pre-eminently possessed a theocratical constitution—we find that justice was administered by judges and by the Elders who sat at the gate of the city, and who were only in some exceptional cases subject to the presidency of the High Priest. Beside them were the scribes and jurisconsults or pleaders, belonging either to the tribe of Levi or to that of Aaron, though not on this account necessarily priests.

In Athens, we may say in Greece, Solon was the legislator, and his regulations are not based on divine authority. Their power came from the purity of his life and the light of his genius, enforced by the oath taken by the citizens to observe them for a hundred years. The magistrates, too, were of his creation. The Areopagus had no sort of religious character, indeed it claimed the privilege of deciding the disputes of the gods. Of the four hundred citizens who composed it, the reputation for integrity and wisdom was all that was required. Wise, not sacred, was the legislation of Solon. He sowed the first seeds of civil legislation: consecrated the duty of supporting the members of the family: inculcated respect for the persons of others: made provision for widows



and orphans of those fallen in defence of their country, and accorded the privilege of bequeathing by will, with certain limits as to the exercise of the same.

In like manner in Sparta, Lycurgus confides the administration of justice to the twenty-eight members of the Senate: citizens, not priests; and makes them swear that the laws shall be kept until his return. He goes to Delphi declaring his intention of consulting the oracle, yet professing less confidence in its answer than in the good faith of his fellow-citizens; and to bind them more securely to their oath he never returns to his country.

The phenomenon now becomes more important, and we may study it best at Rome where it is most fully manifested.

At Rome the influence of the sacerdotal element in its true sense, whether in the legislation or the administration of justice, is very slight. The criminal jurisdiction and the civil one which there arose later, according to a general law, were in the hands of the King, of the Consuls (also called *judices*), of the popular political assemblies, and finally of the prætors.

From the very earliest times the King judged all cases; though there existed, under certain circumstances, the right of appeal to the people against his decision. It is known how the nature of the people lent itself to the development of a somewhat exaggerated formalism; owing to which one could not claim one's rights without adopting the sacramental formula, in which to make the mistake of a word, nay, even of a syllable, probably meant the loss of the case and the forfeiture of one's rights.

These formulæ were in the keeping of the priests, the only persons who, in a nation of soldiers, were likely to be able to write, to collect and transmit them. But it was not the priests who elaborated the law; this emanated from the King, from the learned men, and from the feeling of the people in general. The priests tried hard to make

their intervention indispensable, as this would have augmented the dignity of their office. Indeed, when we reflect on the long struggle between the Patricians and the Plebeians, it seems natural that the former, from whom the priests were taken, should set a high value on a monopoly which would have consolidated their preponderance.

All this is but an external element in the formation of the law. The priests knew the calendar, and said on what days cases could be tried, but for all this they had not the keys of the temple of Themis. In a similar manner they took some action in military affairs, giving auspices or declaring war; yet we cannot say that they took part in the development of the military art amongst the people of Latium.

This would be contradicted if it were true as Spencer asserts that the twelve tables were confided to the jealous custody of the priests; but it is now quite certain that the tables were committed to memory by the children in the schools and exposed in the *forum libertatis*, where they were burnt by the Gauls. The same considerations hold good for the administration of justice. It cannot be said that the priests were the judges. This has been asserted by Jhering, but his authority has been proved to be here at fault. Not even in sacred things did the priests have absolute jurisdiction, for in many cases the supreme judge was the people (at large). The judges were also legislators: first of all the King, then the Consuls, and the *Decemviri*, the *Centumviri*, and the Prætor. Along with these authorities we find another and most potent one: that of the father of the family over his wife and children. This right he exercised as the head of the domestic tribunal, judging many offences without appeal. The royal prerogative of administering justice is met with at various times and in many countries: in Greece, in the Asia of Homer, among the Jews, in England under the Saxon kings, and in ancient

Germany. The attribute was the king's intrusted to delegates or to the people, and if the example of England, where justice was intrusted by the King to free men, be taken from times relatively too recent, we may adduce that of the princes, and the popular assemblies of the Germans, as narrated by Tacitus.

Spencer's theory is true of Egypt, where the thirty judges of Memphis, Thebes, and Heliopolis were selected from priestly families. Nor can we deny that such was also the case elsewhere, being necessitated by the conditions and attitudes of those peoples over the minds of whom religious sentiment and the idea of another world held absolute sway.

The fact, then, that the judicial power did not fall always into the hands of the priests, but only in certain cases, and then as a result of special circumstances, clearly shews that it is a mistake to speak in this connection of *principles and general laws*. Indeed we see that where the union between religion and law has really existed the latter remains in embryo or dies as soon as it is born.

Here the question does not seem to be useless and barren, but rather of the highest importance, viz., the origin of judicial functions. In other terms, it appears dangerous to forget or to deny that as much in their origin as in their development these functions depended on, and were closely connected with, the conditions of their *milieu*. If we admit the existence of one single common law steadily regulating the judicial profession and function, we must consider the administering and making of laws as an inherently uniform mechanism, a maxim which we combat from the conviction that it may become dangerous in certain periods of social life.

Spencer entertains no doubt with regard to the lay origin of lawyers. Their institution is probably owing, he says, to the fact that from the earliest times, the man who found himself unable to speak in defence of his own rights would

have recourse to the assistance of a friend cleverer or better instructed than himself, whose skill would increase by force of practice and eventually become perfect. At Rome, on the contrary, after the formularies of procedure were made public, there arose a class of men called *jurisconsults*: men acquainted with the law, who gave counsel, and from whose ranks arose later on the class of lawyers, composed of those who were endowed with oratorical powers. Later the relations between religion and law became more complicated, nevertheless the lawyers as persons destitute of any official character whatever, appreciated solely by right of their ability in the practice of the law, were as a rule laymen.

When the regulation of this class was complete there began a movement of integration and of differentiation among those who constituted it. We have here to observe that most certainly the two professions of Judge and Lawyer could not have proceeded from the same origin. The Judge is a direct emanation from a special function, the lawyer is an accessory. Nevertheless lawyers became, in progress of time, necessary, and ended by being recognized as a public order; Grellet-Dumazeau (Barreau Romain) writes that the first lawyer appeared as soon as the first tribunal was established, and the first case discussed. The germ of the profession lies in the need of it, as the first doctor was he who first cured the sick. But when can we really begin to speak of this activity as a profession? How was the institution integrated, and how differentiated? What is the special characteristic which is at the same time the condition of its existence? We shall shortly see.

In Egypt the distrust of the arts of the orator after the invention of writing caused the suppression of all oral discussion; nor is there found here any trace of an exercise of the pleader's art. In Athens a similar distrust (felt later in France in 1789) prevented the litigants from calling in the aid of others. Every citizen had to defend himself

and plead his own cause. It happened then, that however gracefully the logogriphs or writers of discourses composed their orations, the client did not always succeed in committing them to memory. He often recited them in such a manner as to provoke the hilarity of the Hellenic public, a critic both exacting and intelligent. Thus on the stage we see the poor pedlar trying in vain to learn his lesson in order to say it before the magistrates, and the rhetorician who traded on his harangues. The people laugh at the jokes of Aristophanes. Thus the way is opened to the profession of the pleader. Greece had thus the most splendid specimens of eloquence that have ever been heard; fresh, warm, and at the same time mature and formed; to her champions were accorded unusual honours, if not imperishable glory. Hundreds of statues were erected to Demetrius Falero, for example, during his life-time.

These orators or pleaders were men who spoke with art and grace; who convinced the Judges and touched the crowd, and who knew how to drive a lucrative trade in words. They were orators and speakers, not jurists, nor jurisconsults. The distinction is so deeply rooted that at a much later period Cicero felt himself called on to explain and demonstrate the importance to the orator of the study of law.

There is therefore no reason why these pleaders should have been connected in any way with the sacerdotal class. The function of defence being only accessory to and integral with the administration of justice, is not the attribute of him who governs.

Up to this period one does not see the rise of the profession of lawyer. This appears when the work of the orator and of the jurisconsult comes into opposition with the ruling powers and with theocracy, issuing from that struggle for liberty which gives it a brilliantly marked character. At Rome the defence of the client was the

prerogative and the duty of the Patrons who were bound to assume it in compliance with the principle that no *civis* could be without defence and, without guarantee of his liberty.

In the middle ages justice took a military form, and defence was, therefore, intrusted to the material bravery of the arm and of weapons. But scarcely was the thick darkness of barbarism dissipated before there appeared on the horizon a more or less formal jurisdiction. The profession of lawyer or defender is almost a continuation of that of arms, the adepts in it being laymen. Indeed the term lay or layman is often used to indicate those pleaders to whom was confided the defence of the interests of churches and monasteries.

In all directions, as well in England as in France, was proclaimed the incompatibility of the function of the lawyer with that of minister of religion. *Nec advocati sint clerici nec sacerdotes in foro sæculari*, is the formula enunciated by the Bishop of Salisbury (1207).

The profession of lawyer in its nature as such, flourishes only where liberty of speech, action and thought have widely flourished. In countries where such liberty is wanting, lawyers do not thrive; they are only government officials to whom is permitted the mere semblance of the task of defender. "Sans indépendance, pas de barreau; dès qu'il peut être asservi, le barreau n'existe plus," according to the well-known phrase of the Chancellor D'Aguesseau; and Napoleon, in subordinating the French bar to the government, found the means of combating the most determined enemy of despotism. The examples of oratory which have descended to us are a proof of the great liberty which reigned in Rome during the time of the Republic and even under some of the Emperors.

When we see Cicero, a man certainly the reverse of warlike, attacking the adversaries, the witnesses and the

judges, branding Vatinius with infamy and flinging himself violently against Verres and Roscius ; and when we think of Quintilian allowing himself to ridicule the speech of the adversary, his behaviour, manners and person, nay, even his features ; when we remember how the Emperors Valentine and Valentinian were induced to pronounce decrees prohibiting such canine eloquence and with a view to moderating the recriminations between the parties, we may conclude that this same exaggeration of liberty was no injury, but rather a benefit to the practice of pleading. In more recent times the Tribunal (Forum) was created and existed where there was a guarantee of independence of professional secrecy and of liberty of speech. In France the ordinance of Tours (1484) recognises these rights of the lawyers, who, in steady and admirable accord among themselves and with the magistrates, contrived to guard them jealously for centuries.

The profession flourished at Venice, where, in the shadow of the Lion of St. Mark, independence and liberty of speech were assured to the lawyer. It flourished betimes in England, where there was a close alliance between liberty and the bar. The freedom of Erskine's speech is quite sufficient proof of this.

On the other hand, in Turkey, Persia and Russia, and until a few years ago in Austria, the profession is vilified and disfigured so as to be unrecognisable. Despotism and politics have the upper hand, and the judges withdraw into the shade, while the barristers, if there be any, are nominated by the Government and subjected to its supervision ; so that, instead of exercising their profession, they are clerks or secretaries to the law courts (as in Russia at the present day), or attorneys, or ushers (as in Bavaria and Saxony up to 1878).

The first and most important condition of the development of the legal profession is then a degree of stable liberty.

Just because this factor has hardly ever been wanting in England, Spencer, who has restricted his researches to his own country, has not given it a sufficient importance; yet, for the determination of a complete law of development, it is indispensable and fundamental. It is not owing to the operation of time, nor of science, nor yet of the union of these two forces, that the profession of lawyer and juriconsult has progressed and differentiated itself. It is owing to its surroundings, which act instantaneously and make their effects immediately felt, like the air in its action on the vital organs.

As soon as lawyers and jurists find before them a free and open field, their tendency is to unite and assemble in groups, to form themselves into corporations, which constantly endeavour to obtain privileges for themselves, and which carefully select their members. In Rome, even during the Republican period, the lawyers formed a college, ruled not by a specially created law, but by the traditional customs of their fathers—the *mores majorum*—on which were founded certain privileges and certain restrictions: the exclusion of women, of the deaf, the infirm and other incapables from the harangues.

Under the emperors there was official registration of the lawyers, and the profession was regulated by suitable legislation. The *Lex Cincia*, which forbade the lawyers to receive from their clients any kind of compensation for their work, fell into disuse. The imperial decrees of Theodore and Justinian establish the conditions with which those must comply who desire to be inscribed on the register. The same decree prohibits the purchase of litigious rights, exonerating at the same time from certain heavy charges and from certain taxes those lawyers called *chiarissimi* and *illustrissimi*. The same thing occurred in France during the middle ages. The lawyers formed corporations. They elaborated customary law, facilitated



the work of the legislator, safeguarded their rights. Thus they were strong in their union, and their good understanding with the judges, for whom they furnished the best stuff for a long space of time. They enjoyed many privileges, and their work was regarded with the highest respect.

In England, too, lawyers have been banded together in colleges from very ancient times. Indeed, the studies and preparations for the profession are still carried on in the *Inns of Court*, colleges rich in glorious traditions, whose discipline rules the life and work of the students.

It is not only the spirit of defence and the solicitude for personal independence which rivet the bonds of the class ; it is also the particular nature of the profession. It would be a mistake to consider the college of lawyers as an ordinary association. Into this error the Constituent Assembly fell when it dissolved the order of barristers in France. The Association, however, soon revived under the name of the *Société des gens de loi*. In every industry as in every profession, scientific, literary, or artistic, unity and the fact of association, contribute to prosperity : they serve to facilitate at once the attainment of individual excellence, and the progress of one or other branch of human activity, and further to promote the material well-being of the members. For lawyers, association is required by the force of things. We cannot well conceive an exercise of the profession without a bond among its members, at least until some qualifications for the exercise of it are decided on. For the other professions, for the Arts and Sciences, association means only a period of their evolution ; for the legal profession it is a condition of existence. The former require it as a means of protection against despotism, and therefore the less liberty there is the greater the necessity for assembling their forces. The latter flourishes in direct proportion to liberty.

Moreover, owing to the special nature of the profession, there must of necessity exist relations not only between client and lawyer, but also between lawyer and lawyer. These relations could not be maintained without the modifying influence of an independent and efficacious supervision. It would not be well, without a more or less rigorous selection of persons, to enter into such relations; for they demand as a rule a great deal of probity and tact, as well as great confidence in the ability and probity of others. The system then of selection is an assurance to the public. For the physician and the architect, of whom above all things science and skill are required, a diploma, the authorisation of an academical body may suffice. A man of law, however, besides the requirement of his science, presupposed by the course of his studies, needs a guarantee of his morality and honesty; and of this none can judge better than the whole body of those who dedicate themselves to the same profession, and who, therefore, should possess the same qualifications.

This is the idea summed up by Berquier in the phrase: "The order of lawyers is not a power but a Jury." Their tendency to associate themselves, or rather their need of doing so, constitutes a practice very nearly universal. In almost every civilised State where there are liberty and lawyers, there are corporations. Chambers, or Orders, or Colleges of Lawyers, with authority of varied extent have existed in Austria since 1868, in Hungary and in Italy since 1874, in the United States for the last thirty years, in England and France for many centuries. These corporations are all fashioned after the same model. They receive within their circle those candidates who have a diploma, who have practised for a certain length of time, or who have passed one or two examinations. They are self-governing and tend to continue so; although under the form of an intrusion of judicial authority there remain here and there

tracés of the efforts of despotism, which from time to time have sought to subjugate them.

“ Now it is by virtue of this autonomy,” as the celebrated Dupin says, “ that the Bar has fulfilled its mission in all times.”

The evolutionary process revealed in the external manifestations of the lawyer's profession may not be found devoid of interest.

“ Canine eloquence,” that violent abuse at which we have already hinted, that martial spirit which ruled even in word-battles, died with Rome. But with Rome eloquence died also. Discussions become an arid and pedantic battle, crammed with barbarisms, limited by the inflexible rules of the dialectics, of the schoolmen with all their distinctions, divisions, negations and concessions.

Later on in France there arose an exaggerated burst of rhetoric, a superabundance of quotation, such a refinement in the choice of words, that in momentary bewilderment people began to believe in the revival of true eloquence. But very soon all this was taken at its true value and met with well-deserved irony and derision.

The defence of *Petit Jean* in Racine's comedy is taken from life.

The Bible, the Digest, the Historians, the Poets, Greek and Latin, the *Glossatores*, the Philosophers, all and sundry, even the oddest and most archaic words and phrases, were placed under contribution with a view to clothing the harangues in the most gorgeous colours.

One lawyer—these are anecdotes taken from the chronicles of the time—in a case concerning a common wall, dilated on the Trojan war and spoke of Scamander. A lawyer (Boileau) in a speech during a case brought by the Duchess d'Aguillon against the Duke of Orléans began a description of the motions of the serpents which (according to Plutarch and the poets) issued from the head

of Cleomenes, King of Sparta, and from the tomb of Anchises. Pausset de Montauban in a case of disputed paternity quotes Herodotus, Democritus, the Spartans, Horace, the Holy Scriptures, St. Augustine, Plato, Seneca and Tertullian!

Nor are these rare or singular instances: such oratory was common at that epoch. Little by little the number and intricacy of the cases increased. Procedure being abbreviated, it became necessary to study the cases more rapidly, and lawyers found themselves unable to accumulate such a wealth of erudition and to embellish their discourses in the retirement of their chambers.

It now became their glory to depend on extempore speaking, called "the soul of defence"; and there was nothing astonishing in a luminary of the French bar presenting himself at the Court of Justice with a playing card in his hand on which were written the chief passages of his speech.

Not only was time wanting, but ideas changed, and with them manners and customs. The style alters, the artistic sense begins to make its way, and by an all-powerful need of reaction the new oratory acquires life and movement in its simplicity. It is an oratory of reasoning, of facts and of arguments drawn from the nature of things rather than from the authority of doctors or from commentaries, taken up at hazard and often ill-chosen.

This movement shewed itself in France a century ago, aided in wonderful fashion by the language itself, and soon found its echo in Italy.

Even earlier than in France this movement was felt in England. This, then, is the characteristic of the third phase in which we now find ourselves and which will continue as long as simplicity does not degenerate into negligence. But should that come to pass then it will become necessary to strike out a new path, or even as has been predicted, to return to ancient art.

T. C. GIANNINI.

## VIII.—THE ATTORNEY IN THE POETS.

*(Continued from p. 355.)*

**I**T is pleasant for the professional reader to turn aside from the main current of denunciation to an eddy of song where the attorney receives only good humoured censure. This is in no less desirable a place than Goldsmith's "Rétaliation." (1774.)

Mr. Hickey,—“an eminent Irish attorney,” Professor Masson tells us,—is the capon of that excellent feast at which Garrick was the salad and Burke was “tongue with the garnish of brains.” However eminent in his day, Mr. Hickey must be accounted fortunate in having acquired immortality in such goodly company. He was perhaps “a mere ordinary man,” without pretensions to genius; he wrote nothing save his briefs and cognovits, but he obtained by accident a wider fame than some more eminent contemporaries, because though not the rose he dwelt near it. His portrait stands at full length between those of Garrick and Reynolds.

Here Hickey reclines, a most blunt pleasant creature,  
 And slander itself must allow him good nature;  
 He cherished his friend, and he relished a bumper;  
 Yet one fault he had, and that one was a thumper.  
 Perhaps you may ask if the man was a miser;  
 I answer, No, no; for he always was wiser.  
 Too courteous, perhaps, or obligingly flat?  
 His very worst foe can't accuse him of that.  
 Perhaps he confided in men as they go,  
 And so was too foolishly honest? Ah no!  
 Then what was his failing? come tell it, and burn ye,  
 It was—could he help it?—a special Attorney.

The indictment is here perhaps less accurately expressed than in the other counts. To be a special attorney—to be appointed by a power of attorney to represent a friend—

might happen to any man ; but to be a general attorney, an attorney-at-law, is a graver offence, and it was this of which Hickey was guilty. Little else is known against him. Like all men who did not sufficiently revere Dr. Goldsmith, he incurred the displeasure of John Forster. Goldsmith's excursion to Paris in 1770, we are told, "was not made more agreeable to Goldsmith by an unexpected addition to the party in the person of Mr. Hickey—whose habit of coarse raillery was apt to be indulged too freely at Goldsmith's expense."\* But even Mr. Forster admits that once, at least, Mr. Hickey told the truth. "Goldsmith sturdily maintained that a certain distance from one of the fountains at Versailles was within reach of a leap, and tumbled into the water in his attempt to establish that position." With that story Mr. Hickey passes from our view. He was fortunate in his friend.

The name of another attorney who stirred the muse has been mercifully withheld. From *An Asylum for Fugitive Pieces*,† we learn that

"David Garrick, Esq., some years ago, had occasion to file a Bill in the Court of Chancery against an Attorney at Hampton, to set aside an agreement surreptitiously obtained for the purchase of a House there ; and while the late Edmund Hoskins, Esq., was preparing the Draft of the Bill, Mr. Garrick wrote him the following lines :—

"To his Counsellor and Friend, Edmund Hoskins, Esq., Tom Fool sends greeting.

"On your care must depend the success of my suit,  
The contest, I mean, 'bout the house in dispute ;  
Remember, my friend, an Attorney's my foe,  
And the worst of his tribe, though the best are so-so.  
In law, as in life, I know well 'tis a rule,  
That a knave will be ever too hard for a fool :  
To which rule one exception your client implores,  
That a fool may for once turn the knave out of doors."

One cannot be surprised at the vehemence of Garrick's detestation. 'For a litigant to dislike his opponent's attorney, at least as much as his opponent, is a common case ; but when opponent and attorney are combined in one person, one must look for a breach of the peace and may be well content to escape with an epigram. That he should think the attorney whom he sued "the worst of his tribe" was natural ; that he should think the best but so-so was a little ungrateful to Sir John Hawkins, who had been at some pains to secure his admission to the Club, and even inspired Garrick's successful appeal to the Chancellor in this very matter. Garrick had happened to mention to Sir John the events by which he thought he saw himself deprived of opportunity to purchase a house he wanted, without hope or remedy. Sir John informed him of a similar case in which equity had interfered, looked up the report, and gave Garrick a note of it. This Garrick apparently mislaid, and on the eve of trial Sir John, again appealed to, obtained the volume containing the report, waited at the theatre and handed it to Garrick to give to his solicitor. And Garrick not only forgot in his rhymes what he owed\* to this friendly attorney, but omitted for months to let his friend know the result of the suit !\* But attorneys in the times of the Georges were a mark for all shafts. It is a little hard to see why ; they were poor enough to be liked. Yet the Rev. Mr. Bramston in his *Art of Politics* notes with approval that,

Now wholesome laws young senators bring in,  
'Gainst gaols, attorneys, bribery and gin.

Dr. Johnson in the perils of the city he loved, noted that "here the fell attorney prowls for prey." Erskine declared to Boswell that he loved him "more than attorneys love by cheats to thrive." Churchill, writing ten years before Goldsmith devised his "Retaliation," congratulated

\* Hawkins' *Life of Johnson*, 2nd Edition, p. 437.

Warburton, Bishop of Gloucester, on giving up thoughts of the law.

But you, my lord, renounced attorneyship  
With better purpose and more noble aim,  
And wisely played a more substantial game.

The "game" of the Church, the revenue of a bishopric, were indeed "more substantial" than the poor allowances to the attorneys which escaped the taxing master's censure. But Churchill seems to have judged the class less severely than his contemporaries, and even recognised that they might suffer injustice. He praised Judge Reason (and by implication denounced other judges) because she had not

—basely to anticipate a cause,  
Compelled solicitors, no longer free,  
To show those briefs she had no right to see.

The anonymous author of the "Probationary Odes for the Laureateship" went further and was willing to allow to one attorney, not indeed virtue, but grammar. Among the persons represented as candidates for the laurel on the death of Whitehead was Sir Cecil Wray, Fox's opponent in the great Westminster Election of 1784. But though the words of the ode were stated to be by Sir Cecil, it was announced that "the spelling" was by Mr. Grojan, Attorney-at-Law. Mr. Grojan, a practitioner in Chancery Lane, was Deputy High Bailiff for Westminster; hence, doubtless, his association with the candidate, and his presence in the queer company which ranged from the Chancellor and the Archbishop of York to Michael Angelo Taylor and Dr. Pretymán. Mr. Pepper Arden, Attorney-General, too, was of the party and sang:

*Indite, my Muse, indite! subpcena'd is thy lyre.*  
The praises to record, which rules of Court require.

But in revenge for the distinction allowed to Mr. Grojan, his official principal, the High Bailiff, from whom Fox recovered swinging damages for his conduct in the scrutiny, is represented as unable to frame a sentence correctly.



With the beginning of the 19th century a more charitable view dawned upon mankind. Even in its worst days the profession must, somehow, have retained some respect, and now, bad as was its general character, there were exceptions admitted. To say that a man was an attorney was now only *primâ facie* evidence that he was a villain; in the time of Dr. Johnson, as declared by the witticism of which he was pleased to be reminded, it had been conclusive proof.

When Crabbe with fear and trembling described the profession in *The Borough*, his principal example was, indeed, an unfavourable specimen; but there was a contrast afforded in honest Archer. Swallow was bad—"a hard bad man who prey'd upon the weak."

Lo! that small office! there th' incautious guest  
Goes blindfold in, and that maintains the rest;  
There in his net th' observant spider lies,  
And peers about for fat intruding flies.

Swallow's villainies consisted in recovering a house from his father on behalf of a client, inciting clients to litigation, after giving them a generous dinner ("his way to starve them was to make them eat") and lending money on expectant interests. This last practice, not criminal in itself, led on to worse courses. With an hypocrisy doubtless natural in his profession, Swallow joined a Chapel, became treasurer, and declined to part with the funds he received on the ground that as some subscribers were dead, there was no one who could give him a valid discharge. And this sad course of conduct, the poet appeared to think, was the necessary consequence of legal training. The young attorney loses heart.

" Law, law, alone for ever kept in view,  
His measures guides and rules his conscience too."

Since they live by law, they incite to litigation. When the client's fierceness abates "these artists blow, the dying

fire, and make the embers glow." The process stops only when the client is exhausted.

But Crabbe admits exceptions. There were honourable men in the profession. These were the well-to-do,

" who hold manorial courts,  
Or whom the trust of powerful friends supports."

An eighteenth century poet could not have made such an admission as this; and the " Pope in worsted " went further still :

Yet I repeat there are who nobly strive,  
To keep the sense of moral worth alive.  
Men who would starve, ere meanly deign to live  
On what deception and chican'ry give ;  
And these at length succeed, they have their strife,  
Their apprehensions, stops, and rubs in life ;  
But honour, application, care and skill  
Shall bend opposing fortune to their will.

Of such is Archer, he who keeps in awe,  
Contending parties by his threats of law ;  
He, roughly honest, has been long a guide  
In Borough-business, on the conquering side ;  
And seen so much of both sides, and so long  
He thinks the bias of men's mind goes wrong :  
Thus, though he's friendly, he is still severe,  
Surly though kind, suspiciously sincere ;  
So much he's seen of baseness in the mind  
That while a friend to man, he scorns mankind.

Sixteen years later, when the second year of the century was beginning, this more favourable view of the attorney received confirmation from within the legal profession. Crabbe was a clergyman, and had been an apothecary; an anonymous member of the bar came now to corroborate the other professions. He pictures the opening of Term :

From Court to Court, perplexed, attorneys fly,  
A Dowling each ! quick scouring to and fro,  
And wishing he could cut himself in two,  
That he two places at a time might reach,  
So he could charge his " Six and eight pence each."

This is but natural weakness, and the author alludes to it, not in reprehension, but with the pride of superiority.

As six-and-eight is to one, three, six, so is an attorney to a member of the bar. The author beholds the attorney again at the assizes, "bustling, hayk-eyed." There the attorney may have the ill-luck to find Scarlett against him and receive "a roasting."

"What!" some old practised *limb* is apt to cry,  
 When such a "roasting" meets his curious eye,  
 "Can all this difference be betwixt a leader  
 And an obliging smiling special pleader?"  
 I well remember at no distant time,  
 When Varro thought it neither sin nor crime,  
 To greet a friend with language soft and kind,  
 That won his patient client's heart and mind.  
 But now, behold! when by their friendly aid,  
 His end is answered, and his fortune made,  
 Up to the top of fame's proud height he goes  
 Then kicks the ladder down by which he rose!

Not content with this exposition of his views in verse, the author added a note in prose. "There is an immeasurable distance between a Barrister and an Attorney; and many of the former have, or affect to have, an absolute antipathy to the latter." He refers to Scarlett's habit of vituperating them in Court, which on one occasion led to the leading case of *Hodgson v. Scarlett*, in which it was decided that no action will lie against Counsel for slander uttered in Court. "One may collect at least three good reasons," continues the poet, "why Counsel should be more abstemious in their vituperation of these gentlemen: 1. They (the Barristers) are sure of the protection of the Court. 2. The abused party cannot reply to any observations, however strong that may be made, on his character or conduct. 3. Nor can he have any redress or satisfaction out of Court."

The Barrister-poet usually, like Blackstone, bids an early farewell to his muse. While he is still among the singing birds, his practice is small, and he has reason to regard the attorney's as angelic visits. Mr. Justice Hayes, in his

"Elegy written in the Temple Gardens," lamented the condition of the briefless in the upper stories,

"The grave Attorney, knocking frequently  
The bustling Clerk, who hastens to the door,  
The bulky brief, and corresponding fee,  
Are things unknown to all that lofty floor."

The same theme has inspired the pen of Mr. Horace Smith. He speaks the very language of the "obliging, smiling, special pleader."

Ah! sweet Attorney! I behold  
Thy brief so fat and fair;  
And on the back is marked the gold  
I long so much to share.  
Alas! why all thy favour pour  
On Robinson, Q.C.?  
Ah! deign to bless the second floor  
And bring thy briefs to me.  
I hear thy step upon the stair!  
My heart beats as 'twould burst!  
Ah me! how vain this foolish fear,  
Thou knockest at the first.  
Raise, raise thy lovely eyes once more,  
Then may'st thou haply see  
The name of Figgins on the door,  
And bring thy briefs to me.

It is, indeed, one of the common complaints against attorneys that they are unduly conservative and timorous in dispensing such patronage as they possess. They are blind to unpractised merit, slow to recognise worth in the new man. That theme must often have been sung. Mr. Smith, himself (doubtless before he mounted the bench), gave us another variant of this opinion to the air of "Three Fishers went sailing."

Three attorneys came sailing down Chancery Lane,  
Down Chancery Lane, e'er the Courts had sat,  
They thought of the leaders they ought to retain,  
But the Junior Bar, oh! they tho't not of that;  
For Sergeants get work and Q.C.'s too,  
And Solicitors' sons-in-law frequently do,  
While the Junior Bar is moaning.

Three juniors sat up in Crown Office Row,  
 In Crown Office Row, e'er the Courts had sat,  
 They saw the Solicitors passing below,  
 And the briefs that were rolled up so tidy and fat.  
 For Sergeants get work, etc.

Three briefs were delivered to Jones, Q.C.,  
 To Jones, Q.C., e'er the Courts had sat,  
 And the juniors weeping and wringing their paws,  
 Remarkd that their business seemed uncommon flat  
 For Sergeants get work and Q.C.'s too,  
 But as for the rest it's a regular "do."  
 And the Junior Bar is moaning.

But here the attorney is not criticised, but wooed. While hope still lingers the junior barrister is not in a position to judge the attorney impartially, at least, aloud. Mr. Haynes Bayly, the drawing room darling, the popular singer of sixty years ago, suffered no such disadvantage. He had renounced attorneyship. He seems to have disliked intensely the study necessary for the profession of the law, and, indeed, he denounced the profession (though it was his father's, and doubtless supported *him*) very freely, in the person of John Quill. Why was Mr. Bayly so angry? Apparently because he himself had but narrowly escaped being one of us. Even then from the son of a solicitor one might have anticipated a more sympathetic criticism.

But the animus and flippancy of Butterfly Bayly were but survivals from the past. A more humane criticism was proper to the nineteenth century, and the attorney was no longer to be considered as a venomous insect, but to be admitted to belong to the vertebrates; and, finally, in 1865, the attorney was definitely admitted within the human family. The honour of making this admission belongs to Mr. Cosmo Monkhouse, in his poem, "John Starkie, Solicitor."\* In some two dozen verses John Starkie revealed his character, and the tragedy of his life—one leaf from the great human

\* *A Dream of Idleness.* Moxon, 1865.

tragedy—just as a doctor, or estate agent, or poet, might have done. The poem is a picture of the Solicitor, not as law agent, but as man of sentiment. John Starkie had loved, and loved in vain ; she had wedded another, just as she often did in the fluent verse of Mr. Haynes Bayly, and, deeply disappointed, Mr. Starkie plunged into practice, and sought to bury his woe amid his papers. How little, he reflected, the world knows of a man's real character !

If this of most be true, 'tis true,  
And doubly true of me,  
Whose roots are plunged down deep from view.  
Whose blossoms none may see.  
A gnarled trunk, all seam'd and crost  
Of hard and knitted grain ;  
Whose hopes were bitten by one frost,  
And never grew again.  
Nor grew, nor died—the sap return'd  
And gathered in the roots ;  
And though in Spring no more it burn'd  
Ambitious of green shoots  
Yet, east and west, and north and south,  
Refresh'd with rain and dew,  
The roots sent slender saplings forth,  
And none knew whence they grew.  
How could they know ? I blame not them ;  
They judge by what they see ;  
They only see the rough old stem,  
And this they take for me.  
How can they tell how I have striv'd  
To keep my real life  
Pure as the life I would have lived  
If *she* had been my wife.  
They think a lawyer thus must act,  
And thus he scarcely can,  
But they, methinks, forget the fact  
That he, like them, is Man.  
The path the toiling foot may tread  
Shows not the spirit's goal,  
And work which earns the body's bread  
Need never stain the soul.

This (though not the end of Mr. Starkie's reflections) is the conclusion of the whole matter. Here is the final crown of the work, the last stage of the long evolution of opinion concerning the attorney. Not always is his nature subdued to what it works in, like the dyer's hand. The work which earns his body's bread need never stain the soul. The attorney, also, even he, like the critics, "is Man."

Here, then, the tale should have its ending. But the poets are like honest Verges—"a good old man, sir, he will be talking." And the true word having been spoken, Mr. Robert Buchanan found himself compelled to fall back upon the legend. Mr. Buchanan was "ever a fighter." He would have made pretty play with his cudgel in the old swashbuckling days; Grub Street would have resounded with his shouts of triumph and the howls of his victims. He costumes his solicitor in the style of the Adelphi, a "villain of halfpenny sheets."

"Sharp like a tyrant, timid like a slave,  
A little man with yellow, bloodless cheek;  
A snappish mingling of the fool and knave,  
Resulting in the hybrid compound—Sneak."

It is not for the reader to contest Mr. Buchanan's criticism on his own creation; Mr. Thomas Sneak, the respectable solicitor, a man of principle, of means, of regular church-going habits, is not the most probable result of the union of a tramp, with a "half tramp, half pedlar and whole scamp." Yet such Mr. Buchanan declared his parentage. Mr. Sneak himself explained the position:

Put execution in on Mrs. Hart—  
If people will be careless, let them smart.  
Oh, hang her children! just the common cry!  
Am I to feed her family? Not I.  
I'm tender-hearted but I dare be just,  
I never go beyond the law, I trust;  
I've work'd my way, plotted and starved and plann'd,  
Commenced without a penny in my hand,  
And never howl'd for help, or dealt in sham—  
No! I'm a man of principle, I am.

What's that you say? Oh! *father* has been here?  
 Of course you sent him packing? Dear, oh, dear!  
 When one has work'd his weary way like me,  
 To comfort and respectability,  
 Can pay his bills and save a pound or two,  
 And say his prayers on Sunday in a pew,  
 Can look the laws of England in the face,  
 'Tis hard, 'tis hard, 'tis shame and 'tis disgrace,  
 That one's own father—old and worn and gray—  
 Should be the only hindrance in his way.  
 Swore, did he? very pretty! Threatened? Oh!  
 Demanded money? You, of course, said "No"?  
 'Tis hard—my life will never be secure—  
 He'll be my ruin some day, I am sure.

Mr. Sneak's pride in his profession is very pleasing. Not everyone can feel his exultation in being on the roll—"the height on which I stand." But Mr. Sneak had, as he said, more than his fair share of trouble. A prodigal father is a severe trial. Mr. Sneak's mistake, in dealing with the problem, was his attempt to make his father a clerk. An old gentleman of wandering habits, given to potations, and in his cups excessively sentimental, if not maudlin, would upset the discipline of any office. The picture of the old man, fed and clothed by his son, and reproaching him for his baseness in prospering in the world, and especially for ingratitude, possesses a humour which Mr. Buchanan, perhaps, did not realize. Mr. Sneak, senior, was of the race which derided attorneys. Set down to copy documents, he preferred to use his son's foolscap to draw (*inter alia*, as his son would have said):

A shape in black, that kick'd and agonised,  
 Strung by a pauper to a gallows great  
 And underneath it written, "*Tommie's Fate!*"

So do the wits repeat their fancies, and Mr. Woty's crowning jest recurs unchanged after the lapse of a hundred years.

More in accord with modern feeling than this outmoded satire is the presentation of a professional man given by Mr. W. S. Gilbert. Mr. Monkhouse first among poets admitted that the solicitor is a man; Mr. Gilbert with



penetrating insight goes deeper to the heart of things, and reveals him as a man of feeling and delicacy almost excessive in its refinement. Mr. Gilbert, indeed, refers many times to the profession. He first made known the Solicitor of Ealing, who wedded a fairy; he refers in fitting terms to the fame of Ely Place; but nowhere has he drawn a more careful portrait than that of "Baines Carew, Gentleman":

BAINES CAREW, GENTLEMAN.

Of all the good attorneys who  
 Have placed their names upon the roll,  
 But few could equal BAINES CAREW,  
 For tender-heartedness and soul.  
 Whene'er he heard a tale of woe  
 From Client A or Client B,  
 His grief would overcome him so,  
 He'd scarce have strength to take his fee.  
 It laid him up for many days,  
 When duty led him to distraint;  
 And serving writs, although it pays,  
 Gave him excruciating pain.  
 He made out costs, distrained for rent,  
 Foreclosed and sued, with moistened eye—  
 No bill of costs could represent  
 The value of such sympathy.  
 No charges can approximate  
 The worth of sympathy with woe;—  
 Although I think I ought to state  
 He did his best to make them so,  
 Of all the many clients, who  
 Had mustered round his legal flag,  
 No single client of the crew  
 Was half so dear as CAPTAIN BAGG.  
 Now CAPTAIN BAGG had bowed him to  
 A heavy matrimonial yoke;  
 His wifey had of faults a few—  
 She never could resist a joke.  
 Her chaff at first he meekly bore,  
 Till unendurable it grew.  
 "To stop this persecution sore  
 I will consult my friend CAREW.

- " And when CAREW's advice I've got,  
Divorce *a mensd* I shall try."  
(A legal separation—not  
*A vinculo conjugii*).
- " O BAINES CAREW, my woe I've kept  
A secret hitherto, you know ;"—  
(And BAINES CAREW, Esquire, he wept  
To hear that BAGG had any woe).
- " My case, indeed, is passing sad,  
My wife—whom I considered true—  
With brutal conduct drives me mad."  
" I am appalled " said BAINES CAREW.
- " What ! sound the matrimonial knell  
Of worthy people such as these !  
Why was I an Attorney ? Well—  
Go on to the *sacvitia*, please."
- " Domestic bliss has proved my bane,  
A harder case you never heard,  
My wife (in other matters sane)  
Pretends that I'm a Dicky Bird !
- " She makes me sing, ' Too-whit, too-wee !'  
And stand upon a rounded stick,  
And always introduces me  
To every one as ' Pretty Dick ! ' "
- " Oh dear," said weeping BAINES CAREW,  
" This is the direst case I know " —
- " I'm grieved," said BAGG, " at paining you —  
To COBB and POLTERTHWAITE I'll go.
- " To COBB's cold calculating ear  
My gruesome sorrows I'll impart."—
- " No ; stop," said BAINES, " I'll dry my tear,  
And steel my sympathetic heart ! "
- " She makes me perch upon a tree,  
Rewarding me with ' Sweetie—nice !'  
And threatens to exhibit me  
With four or five performing mice."
- " Restrain my tears I wish I could "  
(Said BAINES) " I don't know what to do."  
Said CAPTAIN BAGG, " You're very good."  
" Oh, not at all," said BAINES CAREW.

"She makes me fire a gun," said BAGG;  
 "And at a preconcerted word,  
 Climb up a ladder with a flag,  
 Like any street-performing bird.  
 "She places sugar in my way—  
 In public places calls me 'Sweet!'  
 She gives me groundsel every day,  
 And hard canary seed to eat."  
 "Oh, woe! oh, sad! oh, dire to tell!"  
 (Said BAINES), "Be good enough to stop."  
 And senseless on the floor he fell  
 With unpremeditated flop.  
 Said CAPTAIN BAGG, "Well, really I  
 Am grieved to think it pains you so,  
 I thank you for your sympathy;  
 But hang it—come—I say, you know!"  
 But BAINES lay flat upon the floor,  
 Convulsed with sympathetic sob—  
 The Captain toddled off next door,  
 And gave the case to MR. COBB.

Here, then, "the wheel has come full circle." Where the poets of a century ago saw mere greed and villainy the modern seer describes a perfect exemplification of the generous qualities, carefully graduated from the delicate sensibility of Mr. Carew, to the robust helpfulness of Mr. Cobb, and the unassuming but serviceable virtues of Mr. Polterthwaite. An anonymous singer has gone even farther, and pictured the solicitor (as in fact he is) not the oppressor, but the victim of his clients.

"There was a young lady of Ci'cester,  
 Who went to consult her solicitor,  
 When he asked for his fee,  
 She said 'Fiddle-de-dee,  
 I only looked in as a visitor.' "

So the truth prevails, and at last the attorney's virtues are recognised. True this has happened only when Parliament is busy depriving him of his livelihood; but at least truth has prevailed, and doubtless soon from the Bodley Head will proceed a Six-and-eightpenny Garland for its fuller utterance.

E. B. V. CHRISTIAN.

## IX.—CURRENT NOTES ON INTERNATIONAL LAW.

### Jurisdiction in Cases of Judicial Separation.

In a very elaborate judgment, in which all the authorities were exhaustively discussed, Gorell Barnes, J., in *Armytage v. Armytage*, 1898, P. 178, decided that the *bonâ fide* residence of the wife in England is sufficient to give the English Courts Jurisdiction to decree a judicial separation. The petitioner was originally a domiciled Englishwoman who in 1888 was married in Melbourne, to the respondent, a domiciled Australian. In consequence of acts of cruelty alleged to have taken place while the parties were travelling in 1897, on the continent, the wife left her husband and came to reside in this country with her children. She shortly afterwards commenced proceedings for a judicial separation. The husband pleaded a denial of the jurisdiction of the Court. Gorell Barnes, J., held that the Court had jurisdiction. The chief points of interest in the judgment were the following: (1) The learned Judge expressed the view that *Niboyet v. Niboyet*, 4 P.D. 1, "was" "opposed to the general current of cases in this Court and" "had been practically overruled by the decision of the Privy Council in the case of *Le Mesurier v. Le Mesurier*, 1895, Ap. C. 517." But he qualified this by the statement (p. 185) that "The Court does not now pronounce a decree of dissolution" "where the parties are not domiciled in this country," "except in favour of a wife deserted by her husband, or" "whose husband has so conducted himself towards her that" "she is justified in living apart from him, and who up to" "the time when she was deserted or began so to be, was" "domiciled with her husband in this country." (Compare Dicey, *Conflict of Laws*, p. 275-276.)

(2) It was further pointed out (p. 196) that the reasons in favour of domicile being the test of jurisdiction in divorce

cases do not apply to cases of judicial separation. Divorce is essentially a change of status, while a separation only indirectly affects the status of the parties.

(3) The statutory jurisdiction as regards judicial separation is expressly made "as nearly as may be conformable" to the old Ecclesiastical Jurisdiction to grant a dissolution *a mensâ et thoro*, and it appeared to the Court clear that where the parties were formerly within the jurisdiction, the Ecclesiastical Court would have entertained a suit of this kind (p. 194).

#### **Assignments of Moveables.**

The question as to the application of the *lex situs* to dispositions of moveables arose incidentally in the House of Lords in the recent case of *Inglis v. Robertson and Baxter*, 1898, Ap. Cas. 616. G, a domiciled Englishman, had stored goods in a bonded warehouse in Glasgow and had taken delivery warrants for them, drawn to his order "or assigns by indorsement thereon." He indorsed the warrants by way of pledge to J, an English merchant, who gave no notice of the fact to the warehouseman. Subsequently R and B, a Scotch firm, claiming as personal creditors, "arrested" the goods, and thereby asserted a preferential right to that of J. If Scotch Law governed the cases this contention was clearly justified. The House of Lords held that it did apply. Lord Watson said: "The present question does not arise between two Englishmen, nor does it arise in relation to mercantile transactions which can reasonably be characterized as English. The *situs* of the goods was in Scotland. . . . This is a question which I have no hesitation in holding must, in the circumstances of this case, be solved by reference to the law of Scotland." The case of *N. W. Bank v. Poynter*, 1895, A.C. 56, was held to be distinguishable.

JOHN M. GOVER.

## Reviews.

[SHORT NOTICES DO NOT PRECLUDE REVIEWS AT GREATER  
LENGTH IN SUBSEQUENT ISSUES.]

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*Two Chapters in the Law of Torts.* By F. T. PIGGOTT. London : William Clowes and Sons, Limited. 1898. Pp. 39. Price 1s. 6d.

It was to a Japanese audience that these two chapters—in the form of lectures—were first addressed, and the author shows in them throughout that enthusiastic pride in the laws and institutions of our own country, which familiarity with Oriental courts and customs is always inclined to foster. The law of England, which is here at home the butt of many scribblers who are altogether unable to appreciate its merits, figures in these two chapters as something grand and wonderful, which the rest of the world *must* be desirous to understand. And yet, at the same time, the author treats his subjects with a lively wit, which prevents his admiration of the greatness of our law from presenting an absurd aspect, as it must have done in any writer wanting in the sense of humour. The first chapter is devoted to “the reasonable man”—a fictitious legal person who certainly has his comic side. Mr. Piggott discusses his subject in the manner of Aristotle, when in the “Ethics” he discourses on the several virtues. Courage, for instance, is best explained by exhibiting the courageous man, and telling the reader how such an one behaves under various circumstances. Just so does Mr. Piggott discuss “reasonableness.” He exhibits the reasonable man, and informs us how such an one behaves under various circumstances. All that he says is most excellent law, and still, for all that, the method of treatment is of such a kind that the study appears a light and amusing one, as, for instance, when we are informed of the limits of the reasonableness of the reasonable man, and how he does *not* fence his roof for the protection of the man whom he instructs to repair the tiles, or the artist whom he permits to sit there for the sake of the view. Reasonable time is the time which a reasonable man would allow for the purpose in question ; but simple as this matter is to lawyers, the lay public—even in England, to say nothing of Japan—do not always find it so easy to understand. We were lately asked by a servant whether, if a dressmaker were an unreasonably long time in delivering

a dress, the purchaser was not entitled to be an equally long time in paying the bill. It was not quite easy to explain to her satisfaction why she was not so entitled, but Mr. Piggott could have done it. The second chapter upon "the unknown workman," and the doctrine of "*Res ipsa loquitur*," is not less interesting than the first.

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*A Treatise on the Law of Torts.* By R. RANCHODDASS and D. KESHAVAL. Bombay: R. A. Sagoon and G. Narayan & Co. Calcutta: B. Bannerjee & Co. Madras: V. R. Iyer. London: Stevens and Haynes. 1897. Pp. 550. Price Rs. 5.

Students of law in India will find this a very serviceable treatise: the principles of the English common law are well set forth, and the names of the leading cases establishing them are given in large type, while the modifications of our law, which have been effected in India, are carefully explained. There is an appendix of quotations at the end, which will enable the student to anticipate his examination, and so forewarned is to be forearmed.

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*The Law of Mines in Canada.* By WILLIAM DAVID MACPHERSON and JOHN MURRAY CLARK, M.A., LL.B. Toronto: The Carswell Company, Limited. 1898. Pp. 1294.

The Law of Mines in Canada necessarily differs in detail from that of England, because of the difference in the subject-matter. But it is interesting to perceive how all the main principles of the Canadian law upon the subject depend entirely upon the English common law. No English text-book could give more care and attention, than does that of the present authors, to the right understanding of the judgments in every English case bearing upon the points discussed; and the decisions in well-known cases like *Chasemore v. Richards*, *Harris v. De Pinna*, *Halker v. Porritt*, *The St. Helen's Smelting Co. v. Tipping*, and *Webb v. Bird* have evidently been as anxiously scrutinized in Canada as they have been here. The special statutes, however, which have been passed for the regulation of mining in Ontario, Quebec, New Brunswick, Nova Scotia and British Columbia respectively, occupy altogether more than four hundred pages of the work before us. And the number of these statutes is in itself some evidence of the importance of the industries and the properties now represented by mining-works in those portions of the Queen's dominions. This treatise appears to be admirably adapted for its

purpose, and the manner of indexing and the cross-references are likewise excellent.

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*Death-Duty Tables, comprising in an expanded form Tables I.-III. appended to the Succession Duty Act, 1853, with examples illustrating their use and application.* By A. W. NORMAN, B.A., B.Sc. (London), London: William Clowes & Sons, Limited. 1898. Pp. 196. Price 7s. 6d.

This book is of the "ready reckoner" order, and at first sight it might appear that the labour involved in it was merely of an arithmetical description. But a closer inspection will show that the work could not have been done without a thorough understanding of the different Acts of Parliament involved. It is just one of those plodding books for which some good lawyer must be found, and for which he is seldom wanting, when the elucidation of new and difficult enactments, involving figures, requires his aid. The present writer has already given an earnest that he knows his subject, in his earlier "Digest of Death Duties," and the tables now published will be a useful addition to his former work.

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*General Digest—American and English—Quarterly Advance-Sheets.* Rochester, New York: Lawyers Co-operative Publishing Co. 1898. Pp. 1091. Price \$1.

Great industry has been expended upon this compilation, and the result is very satisfactory. Students of comparative jurisprudence, who are desirous of keeping pace with the times in regard to the knowledge of judge-made law, will find this a valuable contribution to their libraries.

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*Employers' Liability and Compensation to Workmen on the Continent.* By A. PEARCE HIGGINS, M.A., LL.B. Edinburgh: William Green & Sons. London: Stevens and Haynes. 1898. Pp. 134.

**Second Edition.** *Employers' Liability under the Workmen's Compensation Act, 1897, and the Employers' Liability Act, 1880.* By A. ROBINSON, B.A., and J. D. STUART SIM, B.A. London: Stevens & Sons, Limited. 1898. Pp. 248. Price 7s. 6d.

**Fifth Edition.** *The Workmen's Compensation Act, 1897, with notes.* By W. A. WILLIS, LL.B. London: Butterworth & Co. and Shaw & Sons. 1898. Pp. 174. Price 3s. 6d. net.



"*Respondet superior*" is a maxim of great antiquity; but the modern development of the responsibility cast upon the "superior" is far beyond anything which was dreamed of in bygone days. The spread of democratic ideas throughout the world has brought about a revolution, universal in its character, in relation to this subject. The law which obtains in this respect in Germany, Austria, France, and Belgium has been carefully investigated by the author of the first of the above-named works; and English employers will at once perceive that they are not the only sufferers from this change in the order of things. It appears that in France the state of public feeling is in a transitional stage. Case-law tends strongly against the employer, as witness the decision in the Hautmont case in the matter of "*La Société de la Providence*," which is related in this work. But case-law in France has not, of course, the importance which it possesses in England. There will be no enduring change until the legislature has moved; but a straw shows which way the wind is blowing. In Germany the theory which prevails is that of "*culpa in eligendo*." If my servant in Germany injures my neighbour, it will lie upon me to show that I did my utmost to choose a servant who would not inflict such injuries; but, if I *can* show this, it is an answer to all claims. In England the employer's position is yearly becoming more difficult; his responsibility *for* his servant is only less than his responsibility *to* his servant. The Act of 1897 is as yet untried; but its importance may be readily appreciated from the fact that Mr. Willis is already able to publish a fifth edition of his little book. Both he and Messrs. Robinson and Sim have been rather in the position of builders without straw; and, in the absence of case-law, the former has had to fill up pages with opinions of his own on questions that may presently arise, and the latter with extracts from the Parliamentary debates which passed when the Bill was under discussion. But both works have been executed with industry and care; there will, doubtless, soon be decisions enough to chronicle, and the writers will be sure to note them under their proper sections in future editions which are certain to be called for.

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*Licensing Practice.* By O. F. CHRISTIE. London: Grant Richards. 1898. Pp. 223. Price 6s. 6d. net.

Third Edition. *Handbook on the Licensing Acts and their Administration.* By ALFRED T. DAVIES. London: Macmillan & Co., Limited. 1898. Pp. 67. Price 2s. 6d. net.

**Twelfth Edition.** *The Licensing Acts, with introduction, notes, forms and index.* By the late JAMES PATERSON, M.A. This edition by WILLIAM MACKENZIE, M.A. London: Shaw & Sons and Butterworth & Co. 1898. Pp. 400. Price 10s. 6d.

Seventy years have passed away since the famous Alehouse Act (Stat. 9, Geo. IV. c. 61) became law, and in spite of all that has been said and written and preached and done in these seventy years, this ancient enactment still holds sway. But though this forms the foundation of the present Licensing Law, very large structures of later days have been raised upon it. Indeed, it may almost be said that hardly a year has passed since the Alehouse Act itself became law, but it has seen some new statute added which has its bearing upon the present system. The enormous importance of the matter cannot be exaggerated, and there are many persons whose very livelihood depends upon their skill in this particular practice alone. Her Majesty's judges have often complained of the confused condition in which the law relating to this practice lies, and every man who first devotes himself to the study of this complicated system reiterates the same complaint. Mr. Christie's book will form a useful introduction to the subject. Its sub-divisions are logical, and its explanations—so far as they go—are lucid. Part I. deals with "full or alehouse licenses;" Part II. is devoted to "certificates granted pursuant to the Wine and Beerhouse Acts;" Part III. grapples with "appeals from licensing justices," with "mandamus" and "certiorari" and "prohibition" and with "stating a case;" Part IV. is concerned with "retail sales which require no justices' license;" and Part V. speaks of "offences," which the author divides under forty-seven heads, referring in each case to the proper section of the statute creating the offence. The little work of Mr. Alfred T. Davies, which has now reached its third edition, is a really admirable index to the whole of the Licensing Acts and their administration—an index alphabetically arranged, and giving as much information as could be expected in the modest compass of the volume. We must explain in what sense we call this work an "index." An index to a law-book, if skilfully written, can contain the whole law in a nutshell, and this handbook is constructed on that principle. As for "Paterson on the Licensing Acts," it has now its own established place on the shelves of all English law libraries. It is a book which needs to be used, and that regularly and constantly, before the reader will feel at home with it; but we venture to think that there are many practitioners who would feel themselves very much lost without it. It is difficult to find one's way about this puzzling labyrinth even with the assistance

of Paterson, but, if that assistance were denied us, the difficulty would be greater still. Mr. Mackenzie's industry has satisfactorily provided against this contingency, and the present issue seems completely up to date.

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**Second Edition.** *The Law of the Press. A Digest of Law affecting Newspapers in England, India, and the Colonies. With a chapter on Foreign Press Codes.* By JOSEPH R. FISHER, B.A., of the Middle Temple and the Northern Circuit, and J. ANDREW STRAHAN, M.A., LL.B., of the Middle Temple and the Midland Circuit, Barrister-at-Law. London: Wm. Clowes & Sons, Limited. 1898. Price 27s. 6d.

The second edition of Fisher and Strahan's "Law of the Press" is not only an enlargement, but the authors have so rearranged and recast the work as to make it appear almost a new book. The introduction to the first edition, conceived in a somewhat journalistic spirit, and dealing with the grievances of the Press and the possible remedies, does not reappear: probably to make room for some of the additional matter which this edition of the book contains, certainly not because the suggestions of the authors have been carried into effect, for there has been little change in the law since the date of the first edition, though the attitude adopted by some of the judges, notably the Lord Chief Justice, has materially decreased the number of speculative actions against the proprietors and editors of newspapers, who must have appreciated the consequent diminution in the amount of legal expenses incurred in defending trivial and frivolous suits brought by impecunious plaintiffs. In the preface to the present edition, the authors refer to the additional protection secured to the Press by the different Colonial Legislatures with reference to the giving of security for costs in certain actions of libel, and the temporary copyrights afforded to newspaper telegrams. The wide scope of the work is seen in Part I., which comprises, with the exception of the Law of Libel, the whole of the Law affecting the Press, including the relations between pressmen and their employers, and the liability of proprietors when members of public bodies. After a chapter dealing very minutely with registration and postal regulations, the law relating to advertisements of lotteries and prize competitions is clearly set forth, and in considering the chaos of the betting laws, a pertinent question is asked as to the legality of tipsters' advertisements giving the specific addresses of the advertisers; but no attempt is made to solve the problem. Copyright is treated fully and concisely; e.g. the effect of

the important case of *Lamb v. Evans* upon copyright law generally and as it affects editors, advertisement canvassers, and the printers of pirated editions. The suggested extension of Bulwer Lytton's Act would certainly remedy a legitimate grievance of the present-day journalist.

Part II. deals with the Law of Libel, a subject which occupies half the book ; but, in spite of the explanatory footnote on p. 181, exception must be taken to the consideration of fair comment under the heading of "Justification." The plea of Justification, rightly or wrongly, has acquired a technical meaning in the law of libel, that the facts as stated by the defendant are true in substance and in fact. If the statement be one of opinion, the test of truth has no application. Comment on, and criticism of matters of public interest are the rights of every individual, and in *R. v. Sullivan and Others* (11 Cox C.C. 54), Fitzgerald, J., said : "A journalist may canvass and censure the acts of the Government and their policy ; and, indeed, it is his duty." Can the journalist, who pleads fair comment, be said to justify his words in the sense in which "justify" is used in the law of libel? In the first edition of this work, "fair comment" appeared under the heading of "Privilege." The maturer consideration of the authors has taken it from the domain of privilege ; it is to be hoped that in the next edition Part II. Chap. II. will be entitled, "Fair Comment, Privilege, and Justification," thus avoiding all confusion of idea and the use of the term "justification" in a sense other than that which is usual in the law of Libel. The explanation of an innuendo is perhaps not very clear, and might be improved by a quotation from the old case of *James v. Rutledge* (4 Rep. 17).

The manner in which the question of malice is dealt with is not quite satisfactory ; thus, on p. 159, immediately preceding the quotation of the definition of Brett, L.J., in *Clarke v. Molyneux*, we find the following words : "express malice as it is sometimes called, to distinguish it from the presumed malice which renders every unprivileged libel actionable." It would be much better, in our opinion, to abandon all reference to presumed malice, or malice-in-law. As has been well said, "malice-in-law is the vaguest possible phrase. It merely denotes 'absence of legal excuse.'" The old dicta that "malice is the gist of the action," and "malice is presumed from the publication of defamatory words," have been long ago consigned to the limbo of fiction. The injury done to the plaintiffs' reputation is the true ground of action : malice is only a reply to a particular line of defence, and no portion of the plaintiffs' *prima facie* case.

On p. 201, in the consideration of the necessity of malice to render slander of property actionable, reference might have been made to *White v. Mellin* (referred to on the preceding page), in which case Lord Herschell, L.C., contrasted the views of Lindley and Lopes, L.JJ. Although it was unnecessary to decide the point, the view taken by Lindley L.J., in the Court of Appeal, was adopted by Lords Watson and Shand, the only lords who discussed the question.

Journalists might well be reminded that a fair and accurate report of proceedings at a meeting of shareholders is not privileged, though the criterion suggested by the authors for determining what is and what is not a public meeting is admirable. In the chapter on Civil Procedure, in which the effect of *Oxley v. Willis* is carefully explained, no reference is made to the right of the executors and administrators of the plaintiff to appear as respondents on appeal from a final judgment, and the case of *O'Connor v. The Star Newspaper Co.* ought surely to have been quoted on the question as to what constitutes "good cause" for depriving the successful plaintiff of his costs; while the paragraph on injunctions, on p. 228, leaves the erroneous impression that the Chancery Courts alone grant interim injunctions.

A summary of Colonial Press Law, so far as regards Registration, Libel, and Copyright, forms Part III., and is a most useful addition; but the fact that the majority of journalists in the South African Republic are British subjects does not seem sufficient to account for the inclusion of the South African Republic laws in the chapter dealing with Colonial law. Their proper and natural place is in Part IV., which nominally contains Foreign Press Laws, but practically only the laws of France and Germany.

Apart from what has been noted above, we have nothing but praise for the book. It is an excellent and interesting work, and considering the various branches of the law brought under contribution, most accurate. It cannot fail to be most useful both to the lawyer and to the vast section of the community which is comprehended in the term "the press." Its value would, however, be greatly increased by a thoroughly good index. The value of a work has been said to vary as its index; if this were so, Messrs. Fisher and Strahan's book would not be the really excellent work which it undoubtedly is. For the present index is by no means as full as it should be. To mention a few instances we search in vain for "comment," "fair comment," "mitigation of damages," "reporters," except as to their presence at public meetings, "security for costs" or "unlawful meetings." With a fuller index the book would be invaluable.

**Second Edition.** *The Devolution of Real Estate on Death under Part I. of the Land Transfer Act, 1897, with the Act, rules, and forms.* By LEOPOLD GEORGE GORDON ROBBINS. London: Butterworth & Co. 1898. Pp. 156. Price 6s.

The author has made the first part of the Land Transfer Act his proper study, but he has not omitted to take into account the remaining portions of the statute. The days have long since departed, in which totally irrelevant matters were introduced into the enactments of the Legislature—when, for instance, a divorce was pronounced as an *obiter dictum* in a boundary statute. Parliament now strives to make its work logical and well-proportioned; and it is, at the present time, a rare thing to find any statute the connection of whose parts cannot be apprehended by a patient and careful reading of the whole. In the work before us, Mr. Robbins explains the connection between the two objects of the Land Transfer Act, 1897, which the preamble states to be (1) to establish a “real representative,” and (2) “to amend the Land Transfer Act, 1875.” The second of these two headings forms the subjects of Parts II. to IV. of the Act. These parts are concerned with the registration of title to land, and with dealings relating to the land the title to which is so registered. Now Mr. Robbins points out that the object of Part I. of the Act is intimately bound up with the same desideratum. The simplification of title is immensely assisted by the appearance upon the scene of this new creature of the law—the “real representative;” for he is one who will have the power to register and to carry into effect the provisions of the latter parts of the Act. There is nothing so fatal to any law as an already existing legal incapacity on the part of divers persons interested to carry out the law; and in no instance has this been more frequently the cause of failure than in that portion of the law of England relating to real property. The legal position of such property, for want of an heir who is *sui juris*, has often again fallen into the greatest confusion. There has been no person who has willingly done anything wrong; but the one person on whom the moral duty would seem to lie, has perhaps in fact the legal incapacity to carry out that duty. Such, in brief, is Mr. Robbins’ diagnosis of this difficult enactment, and in the light of it he has explained Part I. He has brought to bear upon the discussion a considerable knowledge of precedents in equity; and this will be valuable to the reader, for, in spite of all the sweeping revolutions which have passed over the face of the law of real property in recent years, centuries of chancery have left a mark upon that law, which make it an essential to every student

of the subject, that he must look at every phrase and expression of a modern legislature, as well as at those of modern judges, in the light of the ancient learning, which has given to real property law its technical terms, and which indeed has permeated it altogether through and through.

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**Second Edition.** *The Law of Easements, natural rights arising from situation and licenses in India.* By R. B. MICHELL, M.A. (Chief Judge, Court of Small Causes, Madras.) Madras: Lawrence Asylum Press, 1898. Pp. 373.

According to Section 4 of the Indian Easements Act (Act 5 of 1822), an "easement" is a "right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own." It would be hard to improve upon this definition, if a definition of an "easement" in the English law were required. The whole enactment is most instructive and useful, even if regarded merely as a study of the law of easements, quite apart from the huge tracts of her Majesty's empire where it is the text of the law itself. The learned Chief Judge of the Small Causes Court at Madras has, in the volume before us, amply annotated this Act, and his notes will be found full of suggestive ideas to the student of the subject in general. For instance, in connection with the definition above quoted, the author's illustrations showing what is an easement and what is not, may be profitably read. The Indian law seems to have been most amply treated in this work.

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**Third Edition.** *The Law of Arbitration and Awards, with an appendix containing statutes relating to arbitration, and a collection of forms and index.* By JOSHUA SLATER. London: Stevens and Haynes. 1898. Pp. 207.

The lay public is often anxious to form some opinion for itself of the advantages and disadvantages of reference to arbitration, compared with those of having recourse to the tribunals appointed by the State. Even since the establishment of the Commercial Court, a partiality still remains in many quarters for the methods of a private forum. Apart from the questions of what fees must be paid and what time must be expended, the litigant often wishes to obtain a general statement of the law by which the procedure of arbitrations is regulated, and which determines the validity of awards. Persons in search of such last-named information will find it concisely stated in the volume before

us. Only a moderate number of cases are referred to, sufficient to establish the general principles laid down; and the appendix contains seven statutes only as being of supreme importance. First of all there comes, of course, the Arbitration Act, 1889; the Lands Clauses Consolidation Act, 1845, follows; and then the Railway Companies Arbitration Act, 1859. The apposite sections (179-181) are selected from the Public Health Act, 1875. And the second schedule of last year's Workmen's Compensation Act brings it to a conclusion—except for certain repealed statutes added for convenience of reference, nine pages of forms, and a complete index.

**Fourth Edition.** *A selection of Leading Cases on Real Property, Conveyancing, and the Construction of Wills and Deeds, with notes.* By the late OWEN DAVIES TUDOR. This edition by T. H. CARSON and H. B. BOMPAS. London: Butterworth & Co. 1898. Pp. 918. Price £2 10s.

There is no sort of legal education as regards the common law and equity which is at all equal to that provided by the reading of leading cases. And when the old landmarks of the past are exhibited in a modern shape, with such excellent up-to-date notes as those contained in the present edition of Tudor's well-known work, we heartily commend them to the student as the best possible lesson-book upon the subject. If, for instance, he would become acquainted with the main principles of the law relating to rent, distress for rent, and the extinguishment and suspension of rents, he could hardly do better than study the great William Clun's case as it here appears, with careful notes, including notices of all the modern cases, such as *Howitt v. Harrington* [1893], 2 Ch. 497. The present edition has a table of cases with full references, after the most approved modern style, and the notes are now arranged with one column to the page. Otherwise, the general features of the book remain as before, and the excellent arrangement of the index has not been disturbed.

**Sixth Edition.** *Shaw's Manual of the Vaccination Law, containing the Vaccination Acts, 1867, 1871, 1874 and 1898, with introduction, notes, and index.* By a Barrister-at-Law. London: Shaw & Sons and Butterworth & Co. 1898. Pp. 148. Price 5s.

The introduction to this little book contains, in a short space, the whole history of the Vaccination Laws and some discussion of the why and wherefore of each of the statutes in question. The object of the present edition is, of course, to include the Act of 1898, which



has made such important alterations in the law. Everything which could throw any light upon this enactment has been here collected together by the author—even to Sir John Bridge's decisions reported in the *Times* of the 1st and 2nd of September last. The book seems well fitted to be the standard practice-book upon the subject with which it is concerned.

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**Sixth Edition.** *Pratt's Income Tax, being a full analysis of the provisions of the Income Tax Acts, with cases of illustration, explanatory notes, and a copious index.* This edition by JOSEPH HAWORTH REDMAN. London: Shaw & Sons and Butterworth & Co. 1898. Pp. 200. Price 7s. 6d.

This is not a complete collection of the Income Tax Acts, like that of Mr. Dowell, but is a much shorter statement of the law. It is just such a manual of the law upon the subject as will be most useful to business men. In these days of keen commercial competition, a close computation of all probable outgoings is a necessity for the successful business man. And the calculation of income tax is sometimes a matter of very great difficulty, especially in those businesses which are agencies of foreign undertakings. Such businesses require a careful consideration—not only of the forms supplied by the income tax authorities, when the day of reckoning with those authorities arrives—not only with the statute law as it appears upon the face of it, but also with the recent decided cases such as *Grainger v. Gough* [1896], A. C. 325, and *Watson v. Sandie* [1898], 1 Q. B. 326. These cases are noted on p. 69 of the present edition. It is also to be observed that the legal profession, in both its branches, has now a new interest in the law relating to income tax which it did not possess before the passing of the Finance Act, 1898 (Stat. 61 & 62 Vict. c. 10). It is now lawful for the General Commissioners to permit any barrister or solicitor "to plead before them on any appeal for the appellant or officers either *viva voce* or by writing." Those who are so instructed to plead, or hope to be so instructed, may well prepare themselves for the task by mastering the analysis of the law which is here presented to them in the work before us.

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**Seventh Edition.** *The Factory Acts.* By the late ALEXANDER REDGRAVE, C.B. This edition by JASPER A. REDGRAVE and H. S. SCRIVENER, M.A. London: Shaw & Sons and Butterworth & Co. 1898. Pp. 378. Price 6s.

Mr. Redgrave's original work requires no commendation from us. It is the recognized text-book upon the Factory Acts. These

statutes are full of small pitfalls for the unwary ; and it is more easy for a careless man to proceed under the wrong section than under the right section. This book, in its present revised form, is an almost essential *vade mecum* to those who are concerned with the application of these Acts of Parliament. As in the case of "Shaw's Vaccination Acts" already reviewed, the work begins with a historical introduction about the legislation of the century ; and such a subject is always best understood in the light of the knowledge of its history. The present edition includes the Factory and Workshops Act, 1895 (Stat. 58 & 59 Vict. c. 37) ; the Cotton Cloth Factories Act, 1889 (Stat. 52 & 53 Vict. c. 62) ; and the Quarries Act, 1894 (Stat. 57 & 58 Vict. c. 42). There are most useful cross-references between these Acts and the earlier statutes.

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**Fifteenth Edition.** *Archbold's Poor Law.* This edition by T. BROOKE LITTLE, B.A. London : Shaw & Sons and Butterworth & Co. 1898. Pp. 1078. Price 45s.

If this work has been falling into disuse, it is only because until now there has been no edition of it since the year 1885. Thirteen years of legislation have made great differences in the poor law of this country ; and a book on this subject must be revised from time to time to keep pace with the alterations of the law. The present edition contains the changes effected by the Poor Law Acts, 1889 and 1897 ; and, of course, frequent reference has also been made to the Local Government Acts of 1888 and 1893. Settlement and removal, perhaps the most thorny study of all the thorny studies which the law of England affords, naturally occupies a large part of the volume. We also specially recommend the advantages of the Table of the General Orders issued by the Local Government Board, which have been from time to time published in the *London Gazette*, and which are of the greatest importance. This revision will doubtless restore "Archbold's Poor Law" to its former place of high favour in the eyes of the public and of the profession.

## CONTEMPORARY FOREIGN LITERATURE.

*Kosmodike.* Nos. 8 and 9.

This cosmopolitan law review is published at Frankfort, Berlin, Paris, Vienna, and London. It contains articles and advertisements in German, French, English, and Polish, to class them according to their respective bulk. The effect is a little bewildering, though one

is prepared for it by "Cosmopolis," which "Kosmōdike" evidently imitates. The English is sometimes a little uncertain, and looks as if it were not always of home growth. The recent case of *De Nicols* (1898, 2 Ch. 60) is treated at some length, and there is a brief but correct sketch of the growth of the legal capacity of the married woman in England. One paragraph gives a very gloomy view of the social and professional position of the Russian Bar. It numbers only six thousand for the whole Empire, it is ill-paid, has no social position, and does not attract the best men. It is a pity that some of our juniors who overcrowd the Temple cannot see their way to settling in a country where there is only one advocate to every twenty thousand of the population. But perhaps they would not like to be known as *prisiagni* (i.e. sworn), the name is too suggestive of that durance vile which foreigners have a way of associating with Russian life.

*Comité Maritime International. Conférence d'Anvers.* (September, 1898.) Antwerp, 1898.

*Bulletin de l'Association Belge pour l'Unification du Droit Maritime.* Antwerp, 1898.

The report of the Committee adopts the results of the discussion on a proposed draft code defining the responsibility for maritime damage, settling a period of prescription for actions, etc., all matters now differing in different systems of municipal law. Another brochure deals with the responsibility of shipowners, and the report of the Committee on this also appears, as far as regards the Norwegian system. The discussions and reports are very interesting as possible steps to a draft international code on the subject, something on the lines of the Sailing Rules. We are probably not very near such a solution of important questions; but some day a general system of dealing with collisions at sea may be adopted. Its utility is obvious.

*Journal du Droit International Privé.* Paris, 1898. Nos. 5 to 8.

Those numbers are a little inconsistent with the title of the review. They are concerned mainly, as the editor admits, with questions of public law, no doubt of great importance, arising out of the Spanish-American war. On these matters English and American contributors are more in evidence than usual. The interesting articles on submarine cables in time of war (Professor Holland and Mr. Morse),

on coal as contraband of war (Dr. Gover), on the mining laws at Klondyke (Mr. Beulloc, of the Montreal Bar), make a very good show for English-speaking countries. Several recent English and American cases are noticed, the most important being the action brought by the French Republic against the Chicago •Exhibition Company and tried in the Illinois Circuit Court last year. It was held that the organizers of an exhibition are bound to observe the utmost diligence to preserve the exhibits, and failure to do so renders them liable to an action. In this case the exhibits were destroyed by fire, the Court finding that the destruction was due to an insufficient water pressure. The question appears to have been raised, but not decided, whether France could have sued the United States on an implied guarantee of safety of the goods shown. Probably such an action could only have been competent by the United States voluntarily submitting to the jurisdiction of their own tribunals.

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*La Giustizia Penale.* Rome, 1898.

This periodical continues to show that the study of criminal law is one especially suited to the countrymen of Beccaria. It is quite astonishing to read the bibliography of the numerous books and articles published in Italy on the subject. Some of the decisions are very interesting. The English lawyer will perhaps hardly care for cases on breach of the Government monopoly of tobacco, or what is to be done when the foreman of a jury cannot speak intelligibly. On the other hand, cases such as that on p. 858 remind the English lawyer of some of his own text-books. Giuseppe gave his servant Giovanni a loaded gun to clean, neither of them knowing that it was loaded. In the course of being cleaned it went off and injured Vito. It was held that both Giuseppe and Giovanni were criminally liable, the latter on the somewhat curious ground that, as he had been a soldier and accustomed to weapons, he ought to have satisfied himself that the weapon was not loaded.

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*La Revue Générale.* Brussels. July—October, 1898.

With the July number our old friend and contemporary assumes a cover of a new design and hue, to our mind an improvement on the old. The English reader will find one or two articles, which, if not strictly legal, are at least interesting to lawyers. One on New York and Tammany is a commentary on Dr. Bryce's statement that "the government of cities is the one conspicuous failure of the United

States." Another article contains an analysis of the occupations of the 152 members of the Belgian *Chambre des Représentants*. Lawyers are well to the fore, and most of them belong to the winning side. The new House contains 46 advocates, four notaries, and three jurists. In the bibliography of legal works the preponderance of books on election law is conspicuous, as might be expected in a country just recovering from a general election on a new electoral basis. The *Revue Générale* and the *Revue Bibliographique Belge*, issued by the same publishers, both contain a long review of M. Hector Lambrechts' *Dictionnaire pratique de Droit Comparé*, which appears to be a very valuable and complete work. Whether the learned author's sense of proportion is quite developed appears to be a question. Only one volume is devoted to England, while Roumania takes four!

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*Rivista Politica e Letteraria.* Rome. July—October, 1898.

There is little of legal interest in these numbers, except an account of an Italian criminal trial in *Il Racconto dell'Imputato*, one of the short stories. The usual ignorance of English titles is shown in the name of one of the characters, "Sir Percilson," in another novelette, nor does "Lady Makenzie" in the same contribution appear quite possible. The reviews of books are very well done, but none of them deals with legal subjects.

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Received too late for notice in this issue :—*The Maritime Codes of Holland and Belgium*, by His Honour JUDGE RAIKES, Q.C., LL.D. ; *Redress by Arbitration*, by H. FOULKES LYNCH ; *Accidents to Workmen*, by R. M. MINTON-SENHOUSE and G. F. EMERY, LL.M. (London : Effingham Wilson). *Roman Canon Law*, by Professor MAITLAND, M.A., LL.D. (Methuen & Co.). *The Land Transfer Acts*, by W. AMBROSE, Q.C., M.P., and W. B. FERGUSON, M.A. ; *The Criminal Evidence Act, 1898*, by W. B. ALLEN and Sir H. B. POLAND, Q.C. (Butterworth & Co.).

The *Law Magazine and Review* receives or exchanges with the following amongst other publications :—*Review of Reviews*, *Juridical Review*, *Public Opinion*, *Law Times*, *Law Journal*, *Justice of the Peace*, *Law Quarterly Review*, *Irish Law Times*, *Scots Law Times*, *Australian Law Times*, *Speaker*, *Accountants' Journal*, *North American Review*, *Canada Law Journal*, *Chicago Legal News*, *American Law Review*, *University Law Review*, *American Law Register and Review*, *Harvard Law Review*, *Case and Comment*, *Green Bag*, *Virginia Law Register*, *The Docket*, *American Lawyer*, *Albany Law Journal*, *Madras Law Journal*, *Law Digest and Recorder*.





